Supreme Court, U.S.
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No. 03-1716

In the
Supreme Court of the United States

THE LURIE COMPANY (221 N. LASALLE, CHICAGO, ILLINOIS),

Petitioner,

v.

COOK COUNTY BOARD OF REVIEW,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether a taxpayer's due process rights were violated when the Illinois Supreme Court refused to review the Illinois Appellate Court's decision that the taxpayer had waived a meritorious state constitutional argument by not raising it at the initial property tax hearing before the Cook County Board of Review, contrary to Illinois statutes which empower the Illinois Property Tax Appeal Board with *de novo* powers of review over the Board of Review, and contrary to case law establishing that the Board of Review is not a body of record.

2) Whether the Illinois Appellate and Illinois Supreme Courts' refusal to consider the merits of the taxpayer's state constitutional challenge violated the taxpayer's due process rights, where the courts' refusal to review was based on a judicial reversal of existing statutory and case law, constituting a retroactive waiver of rights made 4½ and 5½ years after the Cook County Board of Review hearings, such that the taxpayer had no notice of the risk of waiver or an opportunity to avoid it.

LIST OF PARTIES

The Appellant of Record to the original appeal before the Illinois Property Tax Appeal Board ("PTAB") was The Lurie Company ("Lurie"), the taxpayer (Petitioner herein). Respondent of record to the original appeal before the PTAB was the Cook County Board of Review ("Board of Review").

The Petitioner to the Appellate Court of Illinois, First District ("Appellate Court"), to review the decision of the PTAB, was the Board of Review, represented by the Cook County State's Attorney. The Respondents before the Appellate Court were the PTAB, represented by the Illinois Attorney General, and Lurie, the taxpayer.

The Petitioners to the Illinois Supreme Court for Leave to Appeal from the decision of the Appellate Court were the PTAB and Lurie. The Respondent to the Illinois Supreme Court Petitions was the Board of Review.

The Petitioner to this Honorable Court for a Writ of Certiorari is Lurie, the taxpayer.

CORPORATE DISCLOSURE

Lurie is a privately-held company with no corporate parent or subsidiary requiring disclosure pursuant to Supreme Court Rule 29.6.

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OPINIONS BELOW

On July 13, 1998 and July 12, 1999, the Cook County Board of Review issued one sentence rulings denying Lurie's request for real property valuation reductions for the years 1997 and 1998 respectively. (App. at 1-6.)

Upon appeal by Lurie, the Illinois PTAB, on August 2, 2001, issued a unanimous written decision finding that a valuation reduction from $19,207,450.00 to $14,450,000.00 was warranted based on the valuation evidence presented to the Illinois PTAB. (*Id.* at 7, 32, 49-50.) The Illinois PTAB further found that the proper level of assessment was not 38% of market value but was 25% of market value based, upon a provision of the Illinois Constitution which provides that the level of assessment for the highest class of property can be no greater than two and one half times the level of the lowest class. (*Id.* at 7, 39, 43, 49-50.)

On December 16, 2003, the Appellate Court issued an opinion, reported at *Cook County Bd. Of Review v. Property Tax Appeal Bd.*, 803 N.E.2d 55 (Ill. App. Ct. 2003), in which it held, *inter alia*, that the Illinois PTAB's jurisdiction was limited to matters raised before the Board of Review, and that Lurie had therefore waived the state constitutional issue by failing to present it to the Board of Review. (App. at 51-61.) The Appellate Court also held that the evidence submitted by the Board of Review could not be used by the PTAB to expand the scope of the taxpayer's appeal. (*Id.* at 61.)

On March 26, 2004, the Illinois Supreme Court issued an Order denying the Petitions of the Illinois PTAB and Lurie for Leave to Appeal from the Appellate Court's decision, without comment. (*Id.* at 62.)

JURISDICTION

Pursuant to 28 U.S.C.A. § 1257(a), Petitioner seeks review of the March 26, 2004 decision rendered by the Illinois Supreme Court, on the grounds that said decision is repugnant to the due process guarantees of the Fifth and Fourteenth Amendments to the United States Constitution.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

United States Constitution. Petitioner asserts that it has been denied due process of law guaranteed by the Fifth Amendment to the United States Constitution, which provides, in relevant part, that "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V. So too, the Fourteenth Amendment to the United States Constitution provides, in relevant part, "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.*, amend. XIV.

Illinois Constitution. The state constitutional right which the Illinois PTAB found to have been violated, and of which the Illinois Supreme Court and Appellate Court are claimed herein to have deprived Petitioner without due process of law, is found in article IX, section 4(b) of the Illinois Constitution. That Section provides, in relevant part:

> [C]ounties . . . may classify . . . real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and

> one-half times the level of assessment or rate of tax of the lowest class in that county . . . .

ILL. CONST. art. IX, § 4(b).[1]

Illinois Statutes. The Illinois statutory provisions establishing the scope of the Illinois PTAB's review include title 35, section 16-180 of the Illinois Property Tax Code, which provides that all appeals to the Illinois PTAB "shall be considered *de novo*." 35 ILL. COMP. STAT. ANN. 200/16-180 (West 2002). In addition, section 16-170 ("Hearings"), provides that the PTAB "may require the production of *any* books, records, papers or documents that may be material or relevant as evidence in any matter pending before it and necessary for the making of a just decision." *Id.* 200/16-170 (West 2002) (emphasis added). Section 16-185 ("Decisions"). provides that the PTAB's decisions "shall be based upon equity and the weight of evidence and not upon constructive fraud . . . ." *Id.* 200/16-185 (West 2002). Finally, section 16-190 ("Record of Proceeding and Orders"), provides that the PTAB "shall keep a record of its proceedings and orders and the record shall be a public record." *Id.* 200/16-190 (West 2002).

Illinois Property Tax Appeal Board Rules. The Illinois Property Tax Appeal Board Rules created by the General Assembly are lengthy and are, therefore, included in Petitioner's Appendix pursuant to Supreme Court Rule 14.1(f). (App. at 63-108.)

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[1] The 2 ½ : 1 ratio contained in article IX, section 4(b) of the Illinois Constitution is referred to herein as the "Constitutional Ratio."

STATEMENT OF THE CASE

Petitioner, The Lurie Company (hereinafter, "Lurie"), owns and operates an office building in Chicago, Illinois (the "Property"). (App. at 109.) The real estate taxes due each year on the Property are determined by the assessed valuation set by the Cook County Assessor, subject to any reduction or increase which may be made by the Cook County Board of Review (hereinafter "Board of Review") and any reduction or increase which may be subsequently made by the Illinois Property Tax Appeal Board (hereinafter "PTAB"). After unsuccessfully petitioning the Cook County Assessor to reduce the original 1997 and 1998 assessments of the subject Property, Lurie filed complaints with the Board of Review for the tax years 1997 and 1998. (*Id.* at 109-118.)

Any Cook County taxpayer who seeks an assessment reduction is entitled to a hearing before the Board of Review. *See* 35 ILL. COMP. STAT. ANN. 200/16-55 (West 2002). The Board of Review conducted 110,063 such hearings for 1997, and 93,556 hearings for 1998. (App. at 129.) Such hearings are informal and create no reviewable record, a fact recognized by decisions of the Illinois Supreme Court. *See* discussion at pp. 14-16, *infra*. In this case, the Board of Review conducted its standard hearing and issued a one-sentence ruling denying Lurie's request for a valuation reduction for each of the subject years. (App. at 1-6.) There was no reviewable record made of the hearings. (App. at 1-6.)

Lurie appealed the Board of Review's decision for 1997 and 1998 to the PTAB, an administrative agency created by Illinois statute. *See* 35 ILL. COMP. STAT. ANN. 200/7-5 (West 2002) (App. at 151-154, 161-162.) Unlike the Board of Review, the PTAB is a body of record and all hearings before it are, by statute, *de novo*. *See* 35 ILL. COMP. STAT. ANN. 200/16-180, 190. Court reporters are required in all

cases where a change in assessment of $100,000 or more is sought, *see id.* at 200/16-190, which included the Lurie case. A written opinion is issued on each case indicating the reason for the findings and decision of the PTAB. *See id.* The transcripts and the opinion are maintained by the PTAB in its records. *See id.* In addition, the PTAB is empowered by statute to hear both factual and legal issues. *See* 35 ILL. COMP. STAT. ANN. 200/16-185 (West 2002). The statute provides that the PTAB's decisions "shall be based upon equity and the weight of the evidence . . . ." *Id.*

At the PTAB hearing, in response to the Board of Review's evidence, Lurie raised, and prevailed upon, the state constitutional issue that underlies this Petition. (App. at 27-29, 49-50, 163-164.) That issue is as follows: article IX, section 4 of the Illinois Constitution provides that the level of assessment or rate of tax of the highest property class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that same county. (*Id.* at 7, 27-29.) Lurie argued to the PTAB that Cook County Ordinance mandated a 38% level of assessment to its commercial Class 5a property, despite the fact that residential properties in the same County are assessed at a 10% level, thus resulting in a violation of article IX, section 4 of the Illinois Constitution. (*Id.* at 27-29, 34-49.) After extensive briefing and a full evidentiary hearing, the PTAB ruled that the Board of Review had, in fact, violated Lurie's rights under article IX, section 4. (*Id.* at 49-50.) The PTAB then applied a 25% level of assessment instead of the 38% level of assessment. (*Id.* at 50.)

The Board of Review petitioned the Appellate Court for review of the decision of the PTAB. (*Id.* at 51.) In the Appellate Court Response Brief of Respondent, Lurie argued that the assessments for the years 1997 and 1998 violated its equal protection rights guaranteed by the Equal Protection Clause of the Fourteenth Amend-

ment. (*Id.* at 242-246.) The Appellate Court never addressed this issue and no reference to it appears in its Opinion. (*Id.* at 51-61.) Rather, in an Opinion dated December 16, 2003, 5½ years and 4½ years after the Board of Review hearings, the Appellate Court reversed the ruling of the PTAB, holding that the PTAB's jurisdiction is limited to the issues raised before the Board of Review and that Lurie had waived its Illinois constitutional argument by failing to raise it before the Board of Review. (*Id.*) As is discussed below, this holding was directly contrary to the Illinois statute creating the PTAB, which expressly provided that the PTAB review was *de novo*. *See* 35 ILL. COMP. STAT. ANN. 200/16-180.

Lurie and the Illinois PTAB both petitioned the Illinois Supreme Court for leave to appeal the decision of the Appellate Court, which the Illinois Supreme Court denied on March 26, 2004. (App. at 61, 165, 203.) This Petition for Writ of *Certiorari* follows the order of the Illinois Supreme Court denying discretionary review.

Due process questions were first raised by Petitioner in the Response Brief of Respondent, The Lurie Company, before the Appellate Court and, again, in the Petition for Leave to Appeal of the Lurie Company before the Illinois Supreme Court. (*Id.* at 242-246, 165, 168, 170, 185.) The Appellate Court refused to consider the merits of Lurie's constitutional argument, finding that Lurie had waived it. (*Id.* at 52, 61.) The Supreme Court of Illinois denied Lurie's Petition for Leave to Appeal the Appellate Court's decision and, therefore, never addressed the constitutional issue. (*Id.* at 62.)

A. Summary of Procedural History and Decision

1. The present action was commenced when, for the tax years 1997 and 1998, the Cook County Assessor assessed Lurie's commercial Class 5a Property at $7,298,831 which converts to a market value of $19,207,450. (*Id.* at 1-6.) The

Board of Review denied Lurie's request for a valuation reduction for both years and finalized the assessment for the property at the same $7,298,831 (market value $19,207,450) for both 1997 and 1998. (*Id.*)

2. On July 22, 1998, Lurie filed an appeal of the assessed valuation of its Property for tax year 1997 with the PTAB, Docket No. 97-24242-C-3. (*Id.* at 151-154.) Subsequently, on July 23, 1999, Lurie filed an appeal with the PTAB of the assessed valuation for tax year 1998, Docket No. 98-26195-C-3. (*Id.* at 161-162.) Both appeals were consolidated at the PTAB, as the controlling facts and all of the evidence were identical for both years. (*Id. at* 8-9.)

3. Lurie raised two issues before the PTAB in its request for a valuation reduction for both years: First, Lurie argued that the fair market value of the Property was not accurately reflected in its assessed value; and second, that the Property's assessed value should be reduced in compliance with the Constitutional Ratio provision established by article IX, section 4(b) of the Illinois Constitution, which dictates that a level of assessment of the highest class of property shall not exceed 2 ½ times the level of assessment of the lowest class property within a county. (*Id.* at 7.)

4. On August 2, 2001, the PTAB issued a unanimous written decision, finding that a valuation reduction for both years was proper under both of Lurie's arguments. (*Id.*) First, the PTAB found that the final assessed value overstated the fair market value of the Property. (App. at 7, 49-50.) The PTAB held that the Property's market value for both 1997 and 1998 assessment dates was $14,450,000. (*Id.* at 49-50.)[2]

5. The PTAB also found that a reduction in the level of assessment of the Property was warranted based on

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[2] The Board of Review has not contested these market valuations and they are not at issue in this case. (App. at 52.)

the Constitutional Ratio provision. (*Id.*) A crucial predicate to this ruling was the PTAB's finding that compliance with the Constitutional Ratio provision should be determined using *de facto* levels of assessments reflected in the Illinois Department of Revenue Sales Ratio Studies, rather than the levels stated in Cook County Classification Ordinance. *See* discussion at 10-11, *infra*. (App. at 49.) Relying on the *de facto* assessment levels reflected in the Sales Ratio Studies, the PTAB concluded that, since the lowest *de facto* levels of assessment in Cook County for 1997 and 1998 were 10.09% and 10.08%, for Class 2 residential property, the Constitutional Ratio required the level of assessment on Lurie's property to be no more than 2 ½ times that level, or 25.23% for 1997 and 25.20% for 1998. (*Id.* at 49.) Accordingly, the PTAB reduced the assessed valuation to $3,645,735 for the year 1997 and to $3,641,400 for the year 1998. (*Id.* at 50.)

6. The Board of Review appealed the PTAB's August 2, 2001 decision to the Appellate Court on September 5, 2001. (*Id.* at 51.) In its decision reversing the PTAB's decision, the Appellate Court *sua sponte* characterized the "main question" in the appeal as being "whether the PTAB has the authority to expand the scope of a taxpayer's appeal to include issues never raised by the taxpayer before the Cook County Board of Review." (*Id.* at 52.) The Appellate Court concluded that under the Administrative Review Law (735 ILL. COMP. STAT. ANN. 5/3-101 *et seq.* (2000)) and PTAB's own rules, the scope of PTAB's review and the relief it may grant is limited to the relief sought by a taxpayer before the Board of Review.[3] (*Id.* at 52.) This "main question" was never raised at any level in this matter by any party and specifically was not pleaded or argued before the Appellate Court by any of the parties.

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[3] The same panel of the Appellate Court followed its own months-old decision in *Cook County Bd. of Review v. Property Tax Appeal Bd.*, 792 N.E.2d 8 (Ill. App. Ct. 2002) (sometimes referred to as *"Bosch"*) in reaching its decision in the instant case.

7. In reaching its decision, the Appellate Court held that the scope of the PTAB's review should have been confined to a consideration of the Board of Review's fair market value determination, since Lurie's challenge before the Board of Review was limited to that issue. (*Id.* at 53.) The Appellate Court then applied this ruling to Lurie, and held that the PTAB improperly addressed Lurie's constitutional challenge because Lurie did not raise it before the Board of Review. (*Id.*) The Appellate Court also ruled that the PTAB's consideration of Sales Ratio Studies was improper because Lurie did not submit them to the Board of Review. (*Id.* at 53-61.) The subject of Sales Ratio Studies by the Illinois Department of Revenue was first introduced into the PTAB hearing evidence by the Board of Review as part of its "submission of evidence". (*Id.* at 163-164.) The Appellate Court reversed the order of the PTAB applying a 25% level of assessment to Lurie's Property, and remanded with directions to the PTAB to apply the 38% level of assessment mandated by the Cook County Classification Ordinance. (*Id.* at 61.)

8. On January 20, 2004 Lurie filed a Petition to the Illinois Supreme Court for Leave to Appeal from the Appellate Court's December 16, 2003 decision. (*Id.* at 165-166.) The PTAB also filed a Petition to the Illinois Supreme Court for Leave to Appeal from the Appellate Court's decision. (*Id.* at 203.) The Illinois Supreme Court denied both Petitions by Order dated March 26, 2004. (*Id.* at 62.)

B. Article IX, Section 4 of the 1970 Illinois State Constitution

1. Article IX, section 4 of the 1970 Illinois State Constitution permits counties having over 200,000 inhabitants to classify property for assessment purposes and apply

specific levels of assessment to the given classes. *See* ILL. CONST., art. IX, § 4. (App. at 34.) If a county elects to tax property according to a class system, it is required to comply with the Constitutional Ratio provision. *See* ILL. CONST., art. IX, § 4(b). (App. at 35.)

C. Cook County Real Property Classification Ordinance

1. Cook County is the only county in Illinois that classifies property for tax assessment purposes. (*Id.* at 34.) Cook County's classification system is established in the Cook County Real Property Classification Ordinance ("Classification Ordinance"). (*Id.* at 36.) The Classification Ordinance includes six regular classes of property based solely upon use. (*Id.*)

2. The Classification Ordinance provides for the following assessment levels:

CLASS LEVEL	DESCRIPTION	ASSESSMENT
1	Unimproved land	22%
2	Residential property with six units or less	16%
3	Residential property with more than six units	33%
4	Not-for-profit ownership and use	30%
5a	Commercial property	38%
5b	Industrial property	36%

(*Id.*)

3. Lurie's Property at issue in this case is an office building commonly known as 221 North LaSalle Street in Chicago, Illinois. (*Id.* at 109). It is classified as a Class 5a property and was, therefore, assessed at the level of 38% of market value, which is the highest level of assessment in Cook County. (*Id.* at 36.)

4. Notwithstanding the assessment levels stated in the Classification Ordinance, the reality in Cook County is that residential property is usually under assessed. (*Id.* at 35.) Indeed, Lurie introduced Sales Ratio Studies at the PTAB hearing to show that residential property was actually assessed at rates lower than that called for in the Classification Ordinance. (*Id.* at 37-38, 44.) Conversely, commercial and industrial parcels, such as Lurie's property, are typically over assessed. (*Id.* at 35.) Hence, Lurie's valuation exceeded the Constitutional Ratio provision of the Illinois Constitution. (*Id.* at 49.)

WHY THE PETITION SHOULD BE GRANTED

I. The Illinois Supreme Court Violated Lurie's Right to Due Process By Refusing To Review the Appellate Court's Decision.

The rule established by the Appellate Court's opinion—that the scope of PTAB review is limited to issues raised before the Board of Review—was a new concept that dramatically altered existing law and practice. It conflicted with and superceded the Illinois statute creating the PTAB, Illinois case law regarding the informal nature of Board of Review proceedings, and long-established practice before both the PTAB and the Cook County Board of Review. *See* discussion at 13-16, *infra*. Moreover, because the rule was not announced until years after Lurie had appeared before the Board of Review and the PTAB, Lurie never had notice of the rule or an opportunity to comply with it.

Nevertheless, as it now stands, the rule has been retroactively applied to Lurie and relied on by the Illinois Appellate and Illinois Supreme Courts to avoid considering the merits of the PTAB's finding in Lurie's favor on the Constitutional Ratio claim. This case thus presents a classic example of a state court violating its citizen's rights to due process guaranteed by the Fifth and Fourteenth Amendments and presents an important question for this Honorable Court, the Petitioner, and others in like circumstances.

The essence of the Fourteenth Amendment's due process guarantee is that a citizen is entitled to an opportunity to be heard, "granted at a meaningful time and in a meaningful manner." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982) (*citing, Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *see also Richards v. Jefferson County, Alabama*, 517 U.S. 793 (1996) (a litigant must be accorded a "practicable opportunity" to present its case and protect its rights). It is well-established that this doctrine applies to constitutional challenges raised by taxpayers, and requires taxpayers to be afforded "an opportunity to present [their] case and be heard in support." *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 681 (1930); *Sioux City Bridge Co. v. Dakota County, Neb.*, 260 U.S. 441, 447 (1923); *see also People ex rel. Toman v. Chicago Union Station Co.*, 48 N.E.2d 524, 529 (Ill. 1943) ("Taxing officials are required to obey the edict of the constitution. All taxing laws are to be subordinated to the constitutional edict of uniformity in valuation for the purpose of taxation.").

Lurie's due process rights under the Fifth and Fourteenth Amendments have been violated because:

(a) The Appellate Court's retroactive modification of state law, 5½ and 4½ years after the Board of Review hearings, deprived Lurie of its state constitutional rights and of its statutory rights to *de novo* review

before the PTAB without notice of such change in Illinois law or an opportunity to comply with it.

(b) Even if Lurie had raised the constitutional argument before the Cook County Board of Review it could not have created a record for the Illinois PTAB to review because, as a matter of fact and practice recognized in judicial decisions, the Board of Review creates no reviewable record.

As a result, Lurie has an Illinois constitutional claim that the PTAB found to be meritorious and that the Illinois courts have refused to review on its merits, based on an erroneous interpretation of the law made 5½ and 4½ years after the fact and imposed retroactively.

A. Prior to the Appellate Court's Decision, Existing Law Provided that PTAB Review Was *De Novo*.

When the Appellate Court ruled that the PTAB's review of the Board of Review is not *de novo*, it overruled long-existing Illinois statutes that not only allowed, but required, the PTAB to conduct *de novo* hearings. *See* 35 ILL. COMP. STAT. ANN. 200/16-180. Section 16-180 of the Illinois Property Tax Code states that all appeals to the PTAB "shall be considered *de novo*." *Id.* Section 16-170 of the Code ("Hearings") states that the PTAB "may require the production of *any* books, records, papers or documents that may be material or relevant as evidence in any matter pending before it and necessary for the making of a just decision." *Id.* at 200/16-170 (emphasis added). Consistent with these statutes, judicial decisions in effect at the time also held that the PTAB "must be able to independently evaluate the evidence, unhindered by the conclusions of the board of review below." *LaSalle Partners, Inc. v. Property Tax Appeal Bd.*, 646 N.E.2d 935 (Ill. App. Ct. 1995).

All of these authorities were controlling law at the time Lurie appeared before the Board of Review and the PTAB. Lurie was entitled to rely on them.

B. Prior to the Appellate Court's Decision, Existing Law Provided that Boards of Review Were Not Bodies of Record.

The Appellate Court's ruling also overruled judicial decisions by the Supreme Court of Illinois which held that the Cook County Board of Review is not a "body of record." For example, in *People ex rel. Devine v. Murphy*, 693 N.E.2d 349 (1998), the Supreme Court of Illinois explicitly recognized the impracticality of considering boards of review to be bodies of record:

> [R]ecord review of property tax assessments may not be feasible. As petitioner argues: "[B]oards of appeals and review in Illinois are not presently bodies of record. To make them so given the pressures of the annual tax cycle would be impossible (*e.g.*, the Cook County Board of Appeals hears from 60,000 to 90,000 complaints per year). . . . [R]ecord review of the board of appeals is thus wholly impractical, and it was properly rejected as an alternative by the General Assembly."

Id. at 356 n.2. *Murphy* was existing law at the time Lurie appeared before the Board of Review. The Appellate Court's decision in the instant case flatly contradicted it.

Indeed, in order to implement the law as announced by the Appellate Court in the instant case, the Board of Review would need to transform itself into precisely the type of "body of record" that *Murphy* held was "wholly impractical." The Board of Review conducted 110,063 hearings in 1997, and 93,556 hearings in 1998. *Id.* at 129. The Board of Review would need to accommodate expert witnesses, court reporters, and the admission of

much more documentary evidence. Inevitably, costs will increase for all at an earlier stage, and the Board of Review's decisions will be delayed. The delays at the Board of Review will adversely affect the taxing bodies as the second installment of tax bills will be received even later than the usual tardy date. Which, in turn, will deprive the taxing bodies of their timely appropriations.

Further evidence of the error in the Appellate Court's ruling is that it will virtually preclude any party except the taxpayer from presenting evidence to the PTAB. That is because taxing bodies do not receive notice of hearings before the Board of Review. Rather, taxing bodies only receive notice of appeals to the PTAB where reductions of $100,000 or more are sought. *See* 35 ILL. COMP. STAT. ANN. 200/16-180. Thus, if the PTAB's scope of review is limited to the evidence presented to the Board of Review, taxing bodies will be precluded from presenting evidence to the PTAB in opposition to taxpayers' requests for valuation reduction, which they were permitted to do prior to the Appellate Court's decision.

Similarly, the Board of Review does not present evidence in the hearings it conducts. Rather, it only presents evidence in hearings before the PTAB, when it seeks to defend its own rulings. Thus, if the scope of PTAB review is limited to the evidence presented to the Board of Review, the Board of Review will also lose its opportunity to present evidence in opposition to taxpayers' cases for valuation reductions.

For all of these reasons, no one, including Lurie, ever contemplated that the Board of Review could be capable of creating the kind of reviewable record that the Illinois Appellate Court's decision necessarily would require. To the contrary, the Illinois Supreme Court had previously rejected it in *Murphy*. The Appellate Court, therefore, violated Lurie's due process rights under the Fifth and Fourteenth

Amendments to the Constitution by reversing long-existing law and applying it retroactively to Lurie, and the Illinois Supreme Court denied Lurie due process by failing to review and reverse the Appellate Court's decision.

C. The Appellate Court's Decision, and the Illinois Supreme Court's Refusal to Review and Reverse it, has the Effect of Imposing an Unconstitutional Assessment on Lurie Without Giving Lurie an Opportunity to be Heard.

The Fourteenth Amendment's due process clause prevents states from denying potential litigants the use of established adjudicatory procedures, when such an action would be the equivalent of denying them an opportunity to be heard upon their claimed rights. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-30 (1982) (*citing, Boddie v. Connecticut*, 401 U.S. 371, 380 (1971)). That is exactly what has happened here, where Lurie lacked notice that it was required to raise its state constitutional issues in its informal hearing before the Board of Review. As a result, it has been totally denied a hearing on this issue. The Illinois Supreme Court's failure to review and reverse the Appellate Court's decision constitutes a fundamental due process violation under precedents of this Court.

For example, in *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673 (1930), the plaintiff filed suit in Missouri state court to enjoin collection of certain allegedly discriminatorily assessed taxes. Six years earlier, the Supreme Court of Missouri had held that the state's Tax Commission had no power to grant relief from such taxes. On appeal in the *Brinkerhoff* action, the court reversed itself and held that the Commission did indeed have such power and that because this relief was available to the taxpayer, a suit in equity was inappropriate.

This Court, per Justice Brandeis, held that the Missouri Supreme Court's sudden reversal deprived the plaintiff of property without due process of law. *Id.* This Court stated that a state court's power to reverse itself is limited by a plaintiff's due process right to have an opportunity to be heard and present its case. *Id.* "[A] State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." *Id.* at 682.

In the instant case, Lurie's due process rights have been violated as had the plaintiffs in *Brinkerhoff*, because the law as it existed in Illinois at the time Lurie appeared before the Board of Review and the PTAB was that the PTAB was the proper forum for assertion and preservation of its state constitutional argument.

So too, in *Logan*, this Court considered whether a State may terminate a complainant's cause of action because a state official, for reasons beyond the complainant's control, failed to comply with a statutorily mandated procedure. In an opinion written by Justice Blackmun, this Court recognized that minimum procedural requirements are a matter of federal law. 455 U.S at 432. Accordingly, this Court reasoned, the "legislature [or state] may not constitutionally authorize the deprivation of [a property interest], . . . without appropriate procedural safeguards . . . ." *Id.*

Here, no procedural safeguards protected Lurie's rights under the Constitutional Ratio provision of the Illinois Constitution. To the contrary, when Lurie learned of the Appellate Court's modification of then-existing statutory and case law, it was too late to do anything about it.

When a taxpayer receives neither notice of, nor a proper opportunity to be heard on, a constitutional claim, a state, as a matter of federal due process, may not bar the taxpayer

from challenging the allegedly unconstitutional deprivation of their property. *See Richards v. Jefferson County, Ala.*, 517 U.S. 793 (1996) (Stevens, J.). In *Jefferson County*, two classes of taxpayers filed a state-court action claiming that the county's occupation tax violated the Federal and Alabama Constitutions. In granting the county partial summary judgment, the trial court found that the taxpayers' state claims were barred by a prior adjudication of the tax in an action brought by Birmingham's acting finance director and the city itself, consolidated with a suit by three county taxpayers. The State Supreme Court affirmed, concluding that *res judicata* applied because the taxpayers were adequately represented in the prior adjudication. This Court, in a unanimous opinion delivered by Justice Stevens, held that without proper notice and an opportunity to be heard, the prior adjudication, as a matter of federal due process, may not bar the taxpayers from challenging an allegedly unconstitutional deprivation of their property rights. *Id.* at 805. Specifically, this Court held that, because of the "guarantee of due process", when a taxpayer presents a federal constitutional challenge to a State's attempt to levy property, the state may not deprive him of his day in court. *Id.* at 803.

Jefferson County squarely applies here. Lurie had no prior notice that by failing to raise its constitutional claim before the Board of Review, it waived it. Five and a half and four and a half years later, Lurie had no opportunity to comply with the newly adjudicated law. This constituted a deprivation of Lurie's property right without a proper and meaningful opportunity to be heard or proper notice of the procedures pursuant to which it would be given the opportunity to be heard—a clear violation of its due process rights guaranteed by the Fifth and Fourteenth Amendments.

CONCLUSION

For all the foregoing reasons, this Court should grant Lurie's Petition for Writ of *Certiorari*.

Respectfully submitted,

DAVID K. SCHMITT, ESQ.
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Counsel of Record
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Of Counsel:

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APPENDIX

WILSON FROST
COMMISSIONER

JOSEPH BERRIOS
COMMISSIONER

BOARD OF APPEALS OF COOK COUNTY
ROOM 801 COUNTY BUILDING
CHICAGO. ILLINOIS 60602
TELEPHONE 3121603-5542

07/13/1998

Dear Complainant,

CLASS: 05-91

B/A COMPLAINT TYPE: A

As a result of the hearing on your complaint, after consideration of any evidence or facts submitted, and pursuant to its powers and authority under the Illinois Property Tax Code, the Board of Appeals has determined that a change in your present assessment Is not warranted. It has therefore denied your 1997 appeal on the complaint(s) listed below and has confirmed the assessment as follows:

PROPERTY NUMBER

17-09-419-001-0000

BOARD

COMPLAINT

42661-001

1997 ASSESSED

ASSESSOR

ORIGINAL

7,298,831

VALUATIONS

BOARD OF

APPEALS FINAL

7, 298, 831

CHANGE 0+

This final Board 1997 valuation will be equalized by the Illinois Department of Revenue, as provided by law.

If you are dissatisfied with your 1997 real estate assessment, you have the following option:

1. You may appeal this decision to the Property Tax Appeal Board by filing a petition for review with the Property Tax Appeal Board withIn 30 days after this notice is mailed to you or your attorney, or is personally served upon you or your attorney.

—OR—

2. You may file a tax objection complaint in the Circuit Court of Cook County, Illinois. If you choose this option, please consult the laws concerning the procedure for proceeding in court. In addition, you may file a new complaint at the Board of Appeals next year [f]or 1998 with any new evidence.

Yours very truly,

HENRY J. WLDOYGA

Secretary, Board of Appeals

LEONARD W GOLAN
31ST NATL PL 21ST FL
CHICAGOIL 60602

BOARD OF REVIEW OF COOK COUNTY
ROOM 601 COUNTY BUILDING
CHICAGO, ILLINOIS 60602
TELEPHONE 1-312/603-5542

JOSEPH BERRIOS
COMMISSIONER
MAUREEN MURPHY
COMMISSIONER
ROBERT SHAW
COMMISSIONER

07/12/1999

CLASS: 05-91

B/R COMPLAINT TYPE: P

Dear Complainant,

As a result of the hearing on your complaint, after consideration of any evidence or facts submitted, and pursuant to its powers and authority under the Illinois Property Tax Code, the Board of Review has determined that a change in your present assessment is not warranted. It has therefore denied your 1998 appeal on the complaint(s) listed below and has confirmed the assessment as follows:

1998 ASSESSED VALUATIONS

PROPERTY NUMBER

17-09-419-001-0000

BOARD

COMPLAINT

63042-001

ASSESSOR

ORIGINAL

7,298,831

BOARD OF

APPEALS FINAL

7,298,831

CHANGE

0+

This final Board 1998 valuation will be equalized by the Illinois Department of Revenue, as provided by law.

If you are dissatisfied with your 1998 real estate assessment, you have the following option:

1. You may appeal this decision to the Property Tax Appeal Board at, 9511 West Harrison Street, Suite 1711, DES PLAINES, IL 60016ù1523, by filing a petition for review with the Illinois Property Tax Appeal Board of Review within 30 days of the date of this notice.

—OR—

2. You may file a tax objection complaint in the Circuit Court of Cook County, Illinois. If you choose this option, please consult the laws concerning the procedure for proceeding .n court.

In addition, you may file a new complaint at the Board of Appeals next year For 1999 with any new evidence.

Sincerely,

Charliemae Towbridge

Chief Clerk, Board of Review

LEONARD W GOLAN

31ST NATL PL 21ST FL

CHICAGO IL 60602

PROPERTY TAX APPEAL—BOARD' S DECISION

APPELLANT: The Lurie Company

DOCKET NO.: 97-24242-C-3 and 98-26195-C-3

PARCEL NO..:17-09-419-001

The parties of record before the Property Tax Appeal Board are The Lurie Company, the appellant; and the Cook County Board of Review.

The subject property consists of a 41-story, masonry, office building erected on a 21,000 square foot land parcel. The subject's improvement was built in 1931 and is of multi-tenant usage with two garage levels. The two garage levels contain 21,000 square feet of area.

The appellant through its attorney appeared before the Property Tax Appeal Board arguing two issues: first, that the fair market value of the subject was not accurately reflected in its assessed value and, second, that the proper basis for reducing the subject's market value to an assessed value is by compliance with the Illinois Constitution, Article IX, Section 4(b) that articulates a level of assessment or rate of tax of the highest class shall not exceed two and one-half times the level of assessment of the lowest class within a county.

(Continued on Next Page)

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the Cook County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:See Page 27

IMPR.: See Page 27

TOTAL: See Page 27

Subject only to the State multiplier as applicable.

/s/_____
Chairman

/s/_____ /s/_____
Member Member

/s/_____ /s/_____
Member Member

DISSENTING:_____ CLERK: /s/_____

_____DATE: 8-02-01_____

Final administrative decisions of the Property Tax Appeal Board are subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law and section 16-195 of the Property Tax Code.

At the hearing, the appellant renewed its Motion to Consolidate the two years at issue. A review of the files indicated that: the parties were identical; there were no intervenors in either appeal year; the evidence submitted by both parties was identical; and the issues raised by the appellant in each appeal were identical. Moreover, the appellant correctly noted that the two years at issue were in the same triennial reassessment period. In addition, the Assistant State's Attorney representing the board of review did not object. Therefore, the hearing

officer granted the appellant's Motion to Consolidate the two appeals.

APPELLANT' S EVIDENCE

In support of the market value argument, two complete, self-contained appraisals and supporting testimony were presented. Both appraisals give an estimate of market value as of the effective date of January 1, 1997.

The appellant's first appraisal witness, Terrence McCormick, was called upon to testify regarding his appraisal. He testified that he holds his certification as a General Real Estate Appraiser in Illinois as well as the designation of Member of the Appraisal Institute (MAI).

Mr. McCormick testified that he personally inspected the interior and exterior of the subject property on August 21, 1997. The appraisal indicates that at the time of his inspection, the subject appeared to be structurally sound and reasonably maintained for a Class C building as designated by the Building Owners and Managers Association (hereinafter BOMA). Moreover, the appraisal reflected that the building had received partial renovations over the years that had concluded in 1996 with elevator remodeling and-corridor upgrading. The appraisal stated that in comparison to similar office buildings of the subject's age that the subject appears to be of average to above-average condition. However, the appraisal goes on to state that the 67-year old subject is still at a disadvantage in comparison to more modern and efficient office buildings.

He further testified that the subject property had an estimated market value of $12,200,000 as of the 1997 assessment date. The subject property consists of one high-rise, office building with 424,021 square feet of net

rentable area. He also stated that the two garage levels contain 19,854 square feet of area. In reviewing the subject, he determined that the above-grade, gross building area was 520,827 square feet, while the below-grade, gross building area was 53,731 square feet. He stated that the highest and best use of the subject, as vacant, would be for future development of an office building, whereas the highest and best use, as improved., would be its current use as a multi-tenant, office building. He accorded a land-to-building ratio of 0.04:1 to the building based upon gross building area.

Mr. McCormick developed the three traditional approaches to value in estimating the subject's market value. The cost approach indicated a value of $11,900,000, rounded. The income approach indicated a value of $11,900,000, rounded. The sales comparison approach indicated a value of $12,700,000, rounded. He concluded a market value of $12,200,000 for the subject property as of the January 1, 1997 assessment date.

The first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the site using five comparable land sales. The properties ranged in size from 2,914 to 42,903 square feet. The properties sold in a

period from July, 1995, to April, 1997, for prices that ranged from $94.04 to $265.72 per square foot, or from $7.84 to $17.71 per floor arearatio (FAR).

Mr. McCormick testified that he undertook a dual analysis of the subject based upon the accumulated data. Using the square foot analysis, his value-estimate for the land was estimated at $300 per square foot, or $6,300,000, rounded. Using the FAR analysis, he estimated a value of $18 per FAR, or $6,048,000. In viewing both estimates, he determined a final land value of

$6,200,000, rounded, for the subject. At hearing, Mr. McCormick testified that he chose $300 per square foot which was slightly higher than the comparables' range because of the subject's location. He stated that the subject was located in a more desirable location, whereas the comparables were located in the West Loop or north of the subject. He stated that there were no land sales in the Central Loop where the subject is located.

The appraiser estimated the reproduction cost prior to depreciation as $61,979,427, or $115.18-per square foot for the office area and $37.01 per square foot for the basement area using the Boeckh's Automated Cost Estimator. He stated that the subject property had an effective age of 50 years relating to the typical economic life of 60 years. He estimated the physical deterioration at 78.6%, or $48,715,830. He determined that the functional and external obsolescence to the subject amounted to $7,572,058. In his opinion, the total amount of depreciation attributable to the subject from all causes was 90.8%, or $56,287,888. Under this approach, he indicated a value of $11,891,539, which is calculated by adding the depreciated value of the improvements of $5,691,539 and the land value of $6, 200, 000.

Under the income- approach, Mr. McCormick undertook a dual analysis. Initially, he analyzed the subject's actual income and expense data. He utilized the BOMA 1997 Experience Exchange Study as well as his own appraising experience. The BOMA study used was for buildings containing from 300,000 to 600,000 square feet. In addition, he reviewed and attached a copy of the subject property's rent roll as of January 1, 1997. The actual income and expense data reflected that the subject had a net income as follows: $3,873,450 as of December, 1994; $4,008,157 as of December, 1995; and $3,637,604 as of December, 1996.

In the second analysis, the appraiser utilized market rents that were derived from 16 rental comparables. In obtaining comparables, he noted that the subject property is located on LaSalle Street in Chicago's Loop; therefore, he obtained nine rental comparables that are also located on LaSalle Street. The rentals ranged in size from 994 to 7,349 square feet with rental rates that ranged from $12 to $20.56 per square foot.

Under this analysis, Mr. McCormick estimated the potential gross income for the subject to be approximately $7,384,203 using $18 per square foot for the rentable building area and $5.50 per square foot for the rentable parking area. He then deducted 12% for the vacancy and collection loss and added other income to estimate an effective gross income of $6,548,099. The appraisal indicated that the other income was based upon the subject's actual other income for years 1994 through 1996 which were stabilized at $50,000.

In determining management expenses, Mr. McCormick analyzed the subject's operating expenses in comparison to BOMA industry data. Management expenses were then deducted resulting in a net operating income of $2,138,099. An overall capitalization rate of 17.98% was used. Capitalizing the net income resulted in an estimate of market value for the subject of $11,891,540, or $11,900,000, rounded.

The final method developed by this appraiser was the sales comparison approach. Under this approach, Mr. McCormick utilized eight suggested sales comparables that were all multi-tenant, office buildings located in Chicago's Loop. Specifically, three of the properties were also located on LaSalle Street as the subject, while seven of the eight properties were classified as Class C office buildings. Property #8 was classified as a Class B office building.

These properties sold from March, 1994, to March, 1997, for prices that ranged from $2,510,000 to $12,750,000, or from $15.41 to $44.64 per square foot, unadjusted. The properties contained improvements that ranged: from 13 to 25 stories, from 32 to 103 years in age, from 93,788 to 827,494 square feet of net rentable area, and from 12% to 70% vacancy. The properties contained land-to-building ratios that ranged from 0.05:1 to 0.08:1.

After making adjustments to the properties, Mr. McCormick estimated that the subject had a market value under the sales comparison approach of $30 per square foot utilizing the net rentable building area of 424,021 square feet. Thereby, this analysis resulted in a market value of $12,720,630, or $12,700,000, rounded, for the 1997 assessment year.

In reconciling the three approaches to value, Mr. McCormick relied primarily on the income approach to value with secondary emphasis given the sales comparison approach. He estimated the subject to have a final market value of $12,200,000 as of the 1997 assessment date.

Upon cross-examination, Mr. McCormick stated that the subject suffered from an 8% vacancy on the date of valuation that grew to 14% by the end of calendar year 1997. He stated that these percentages were slightly lower that the market for the Central Loop. At that time, he stated that Class C office buildings were at 28% vacancy, Class B buildings were at 13% vacancy, and Class A buildings were at 11% vacancy. As to his improved sales comparables, Mr. McCormick testified that sale #6 was sold by order of the Court due to nonpayment of back taxes.

The appellant's second appraisal was prepared by Mr. George Collins and Mr. Joseph Ryan of the LaSalle

Appraisal Group. Mr. Collins was the appellant's second witness. He testified that he has held his certification as a General Real Estate Appraiser in Illinois and Wisconsin since 1988. Since 1982, he has been employed as a commercial appraiser, while since 1995, he has also held the MM designation. Moreover, he stated that in 1997 he personally conducted from 12 to 15 appraisals of property located in Chicago's Loop.

Mr. Collins testified that he personally inspected the interior and exterior of the subject property. At hearing, he testified that a ground level exterior inspection was conducted as well as a tour of all vacant suites, a number of common areas, a tour of several occupied suites, and a review of the basement area.

In reviewing the real estate market for office buildings, his appraisal states that the office market suffered greatly during the late 1980's and the early 1990's due to overbuilding. Therefore, the current office market reflects relatively high vacancies and depressed rents. His appraisal also. . ..analyzes the classes of office space. It states that newer buildings with high levels of amenities are classified under BOMA. as Class A buildings. As building age and newer facilities with more modern amenities become available, a building will slip into the Class B category. Class C buildings represent the oldest office building with the fewest amenities. As a result of a building's desirability, the appraisal indicates that Class A buildings have the lowest vacancy rate in Chicago. The vacancy rate in 1996 for Class A buildings is approximately 10%, while the Class C vacancy rate is nearly 30%. The appraisal states that this high vacancy level keeps rent increases to a minimum. The subject property is considered a Class C office building.

Mr. Collins indicated that the subject was located on a 21,000 square foot land parcel with a FAR of 24.8. He indicated that the subject contains a total of 398,092 square feet of leasable building area and 520,827 square feet of total building area. His appraisal indicates that the net building area includes 14,629 square feet of retail lobby area. Additionally, the building has 19,584 square feet of garage area and 4,704 square feet of storage area.

He indicated that the subject was of fair condition and accorded it an effective age of 43 years with a typical economic life of 50 years. Lastly, he indicated that as of the appraisal date, the subject property contained a vacancy rate of 8.64%. This was supported by the attached rent rolls for the subject. Mr. Collins determined that the highest and best use, as vacant, f or the subject would be to hold it as vacant until new office development could be financially feasible. The subject's highest and best use, as improved, was for continued use as an office building.

Mr. Collins developed the three traditional approaches to value in estimating. the subject's market value. The.. cost approach indicated a value of $14,040,000, rounded. The income approach indicated a value of $14,640,000, rounded. The sales comparison approach indicated a value of $13,930,000, rounded. He concluded a market value of- $14,450,000 for the subject property as of the January 1, 1997 assessment date.

The first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the site using five comparable land sales. The properties ranged in size from 35,000 to 100,188 square feet. The properties sold in a period from May, 1992, to April, 1997, for prices that ranged from $7,525,000 to $20,500,000, or from $200.77 to $271.43 per square foot.

Mr. Collins testified that he undertook an analysis of the subject based upon this accumulated data. He testified that adjustments were made to the land comparables based upon date of sale and property location. Therefore, his value estimate for the land was estimated at $300 per square foot, or $6,300,000, rounded.

This appraiser estimated the replacement cost new prior to depreciation as $55,249,328, or $106. 08 per square foot using the Marshall and Swift Cost Manual. He stated that the subject property had an effective age of 43 years relating to the typical economic life of 50 years. Using the age/life method, he estimated the physical deterioration at 86%, or $47,514,422. He determined that there was no functional obsolescence other than accounted for in the age/life method of determining depreciation and that the subject's external obsolescence was caused by the collapse of the office sector in the early 1990's. Therefore, he allocated no dollar amount to these areas. In his opinion, the total amount of depreciation attributable to the subject from all causes was 86%, or $47,514,422. Under this approach, he indicated a value of $14,044,906, which is determined by adding the depreciated value of the improvements of $7,734,906 and the land value of $6,300,000.

Under the income approach, Mr. Collins also undertook a dual analysis. Initially, he analyzed the subject's actual rent roll data. He utilized the data that reflected more than 1,000 square feet of rented area. Because there were no new leases that met this criterion in 1996, he used 1995 leases instead. The leases range in size from 1,053 to 6,062 square feet and in rental rate from $15.72 to $23 per square foot.

In the second analysis, the appraiser utilized market rents of Class C office space in the Loop that were derived from 12 comparables. In obtaining comparables, he noted that the subject property is located on LaSalle Street; therefore, he obtained at least three rental comparables that are also located on LaSalle Street. Moreover, ten of the properties were Class C buildings, while the latter two properties were Class B buildings with higher rents. The rentals ranged in size from 1,393 to 25,001 square feet with rental rates that ranged from $13.75 to $20 per square foot.

Under this analysis, Mr. Collins estimated the potential gross income for the subject to be approximately $6,720,858 using: $16.50 per square foot for the rentable building area; $9 per square foot for the storage space scattered throughout the basement and the building; as well as other income derived from the parking garage area.

At hearing, Mr. Collins testified that as of the assessment date, the subject suffered from a vacancy rate that was slightly less than 10%. However, that was significantly less than the market averages for downtown Chicago. Therefore, he stabilized the vacancy for the subject at 15% based upon market rates. He then deducted 15% for the vacancy and collection loss to estimate an effective gross income of $5,712,729.

In determining operating expenses, Mr. Collins analyzed the subject's operating expenses in comparison to industry data reflected in the "1996 Income and Expenses Analysis of Office Buildings" published by the Institute of Real Estate Management (hereinafter IREM). Operating expenses were then deducted resulting in a net operating income of $2,567,803.

In determining an overall capitalization rate, he testified that two methods were used in this estimation. First, various capitalization rates were derived from the comparable sales which ranged from 8.9% to 14.5%. Based upon these sales, an overall

capitalization rate of 10% was concluded. Secondly, a mortgage equity analysis was conducted. This method indicated a slightly higher capitalization rate of 10.5% as well as an effective tax rate for the subject of 7.5%. Therefore, an overall capitalization rate of 17.54% was used. Capitalizing the net income resulted in an estimate of market value for the subject of $14,639,698, or $14,640,000, rounded.

The final method developed by this appraiser was the sales comparison approach. Under this approach, Mr. Collins utilized ten suggested sales comparables that were all multi-tenant, office buildings located in Chicago's Loop. Specifically, three of the properties were also located on LaSalle Street as the subject, while five of the ten properties were classified as Class C office buildings. Four properties were classified as Class B office buildings, while one building was considered a Class A.

These properties sold from July, 1995, to June, 1997, for prices that ranged from $3,700,000 to $99,572,520, or from $23.76 to $107.54 per square foot, unadjusted. The properties contained improvements that ranged: from 10 to 38 stories, from six to 104 years in age, from 155,750 to 925,950 square feet of building area, and from 3~ to 43~ vacancy rate. The properties contained floor area ratios that ranged from 9.06 to 25.03. The appraisal also notes that the five properties with anchor tenants also have the lowest vacancy rates.

After making minor adjustments for age, date of sale, or location to the properties, Mr. Collins estimated that the subject had a market value under the sales comparison approach of $35 per square foot of building area that comprises 398,092 square feet. Thereby, resulting in a market value of $13,933,220, or $13,930,000, rounded, for the 1997 assessment year.

In reconciling the three approaches to value, Mr. Collins relied primarily on the income approach to value with secondary and significant emphasis given the sales comparison approach. He estimated the subject to have a final market value of $14,450,000 as of the 1997 assessment date.

Under cross-examination, Mr. Collins stated that sale #8 was purchased by a government agency, but given the nature of the transaction, he did not believe that this was a distressed sale. Moreover, he stated that sale #3 was not a foreclosure sale, but a sale after a prior foreclosure.

As to the appellant's second issue, the parties were given leave at the conclusion of the hearing to submit legal briefs regarding their respective positions on the 2.5:1 constitutional issue.

BOARD OF REVIEW' S EVIDENCE & ARGUMENT

The board of review presented "Board of Review Notes on Appeal" wherein the subject's final assessment of $7,298,831 was disclosed. In addition, an unsigned, appraisal report was submitted. At hearing, the board of review stood on the evidence submission and did not call a witness to expound on said evidence.

The board's report consisted of the development of the three traditional approaches to value in estimating the

subject's market value. The cost approach indicated a value of $24,000,000, rounded. The income approach indicated a value of $23,000,000, rounded. The sales comparison approach indicated a value of $23,000,000, rounded. He concluded a market value of $23,000,000 for the subject property as of the January 1, 1997 assessment date.

The report reflects the same descriptive data submitted by the appellant's appraisers. However, this analysis indicates that an inspection was undertaken of the subject and its neighborhood to determine the physical features and condition of the building. Nevertheless, the analysis does not enumerate on: who conducted said inspection, when the inspection was conducted, the extent of the inspection, or the results of that inspection.

The analysis also looks to the Loop office market via reference to the BOMA Chicago Office Market Report for Spring, 1998. The BOMA report indicates that the occupancy level of office buildings stands at 86.79% as of January 1, 1998. Additional

analysis of the BOMA report; however, relates to Class A buildings without further reference to Class C buildings similar to the subject. The board of review's analysis also refers to additional reports such as: The Cushman & Wakefield, Inc. report, Cram's Chicago Business, and the Wall Street Journal. However, once again, the data enumerated from these reports make reference only to Class A office buildings.

At one point, the analysis accords the subject an actual age of 67 years, an effective age of 45 years, and a remaining economic life of 70 years. The data are contradicted later in the report. Therein, the subject is accorded an effective age of 45 years and a remaining economic life of 25 years. The analysis accords the subject a highest

and best use, as vacant, as commercial use and, as if improved, as currently improved.

The first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the site using ten comparable land sales. The properties ranged in size from 8,424 to 104,304 square feet. The properties sold in a period from July, 1995, to April, 1998, for prices that ranged from $1,500,000 to $46,770,000, or from $106.50 to $972.62 per square foot. There were several unanswered questions regarding the nature and the comparability of the chosen properties.

In analyzing the land sales, the report also indicates that the average sales price was $342.08 per square foot and the median sales price was $235.62 per square foot. However, the report indicates that land sale #2 with a price per square foot of $972.62 was deemed the best indicator of value for the subject without any enumerated explanation. Nevertheless, the value estimate for the land was estimated at $400 per square foot, or $8,400,000, rounded.

The analysis estimated the replacement cost new prior to depreciation as $42,288,624 using the Marshall and Swift Cost Manual. However, a review of the Marshall & Swift summary report included in this analysis indicates the following: that the office building was listed as steel frame when the subject is of masonry construction, that the total area is listed as 482,278 square feet when this is not the square footage previously identified in this report, that the basement area is incorrectly listed as 52,500 square feet, and that the garage square footage is not identified or accounted for anywhere in the report.

Using the age/life method, the analysis estimated the physical depreciation at 64%, or $27,064,719. The analysis determined that there was no functional or external

obsolescence without any enumerated reasoning. Under this approach, a value of $23,623,905, which is estimated by adding the depreciated value of the improvements of $15,223,905 and the land value of $8,400,000.

Under the income approach, ten properties were reviewed; however, descriptive data were supplied on only eight of the ten properties. However, these eight properties were identified as Class C office buildings located on LaSalle Street. The ten rentals ranged in size from 152,725 to 1,202,740 square feet with rental rates that ranged from $14.98 to $32.25 per square foot. The analysis reflects an average rental rate of $20.25 per square foot; however, the analysis accords the subject a rate of $18 per square foot without further enumerating any reasoning.

Under this analysis, the potential gross income for the subject was, listed as $7,632,378. With a deduction of 10% for the vacancy and collection loss, an effective gross income of $6,869,140 was estimated. No other income was identified or recognized in this analysis.

Operating expenses were then deducted resulting in a net operating income of $4,121,484. An overall capitalization rate of 17.73% was used. Capitalizing the net income resulted in an estimate of market value for. the subject of $23,245,821, or $23,000,000, rounded.

The final method developed was the sales comparison approach. Under this approach, seven suggested sales comparables that were all office buildings located in Chicago's Loop. Specifically, five of the properties were also located on LaSalle Street as the subject, while four of the eight properties were classified as Class C office buildings. One of the remaining three properties was classified as a Class B office building, while the remaining two buildings were considered a Class A.

These properties sold from November, 1996, to March, 1998, for prices that ranged from $4,625,000 to $129,528,830, or from $29.65 to $107.54 per square foot, unadjusted. The properties contained improvements that ranged from six to 104 years in age and from 156,000 to 1,363,050 square feet of building area. The number of stories, the floor area ratios, tenant composition, and the vacancy rates were not enumerated. However, the land-to-building ratios ranged from 0.04:1 to 0.10:1.

The summary of the improved sales indicated that the average sales price of $74.84 per net rentable square foot and a median sales price of $72.33 per net rentable square foot. The analysis also states that improved sale #1 at a price of $95.03 per square foot was deemed as the most comparable to the subject. However, the analysis accords a value of $55 per square foot to the subject. Thereby, this analysis resulted in a market value of $23,321,155, or $23,000,000, rounded. Lastly, there was no reconciliation of the three approaches to value.

Furthermore, the board submitted the Cook County Real Property Assessment Classification Ordinance which provides for an assessment level of 38% for Class 5A property such as the subject. The board also submitted case law, In re: Application of Rosewell v. U.S. Steel Corp., 106 Ill. 2d 311, 478 N.E.2d 343 (1985) and In re: Application of County Treasurer v. Twin Manors West of Morton Grove Condominium Association, 175 Ill. App. 3d 564, 529 N.E.2d 1104 (1st Dist. 1988). No brief with an explanation as to each case's relevance in the present appeal was submitted. Finally, the board submitted a report entitled The Illinois Ratio Study for Commercial and Industrial Properties: Review and Recommendations, by Robert J. Gloudemans and Alan S. Dornfest [hereinafter, the "Dornfest report"] . The "Dornfest report" re-

viewed and evaluated the procedures and methodology used by the Illinois Department of Revenue in its annual sales ratio studies.

Based on its analysis report, the board of review requested a finding of $23,000,000 as the fair market value of the subject as of the 1997 assessment date.

In appellant's written rebuttal, the appellant submitted copies of the Illinois Department of Revenue's PTAX 215 summary sheets for the years 1992 through 1995 that relate to the issue of the median level of assessment.

At hearing, the appellant presented additional rebuttal. The appellant called as its witness, Mr. Anthony Uzemack. Mr. Uzemack testified regarding his technical review of the board of review's appraisal report.

Mr. Uzernack testified that he holds the designation of GeneCertified State appraiser in the following States: Illinois, Michigan, and Georgia. Moreover, he indicated that he also holds the MA.I designation since 1987 and is an instructor for the Appraisal Institute in various areas.

Initially, Mr. Uzemack elaborated on the various types of appraisal reviews that can be undertaken. He testified that his assignment was to undertake a technical review of the board of review's appraisal report. He stated that a technical review pursuant to the Uniform Standards of Professional Appraisal Practice (USPAP) is the highest level of review. Such a review includes all of the necessary ingredients to have the reviewer arrive at an estimate as to the appropriateness of the information presented in the report and the completeness of the description and analysis used in the report. He stated that the scope of his report was to make a careful study of the report and review the report using the 1997 version of USPAP. He also testified that

he referred to this version of USPAP because the board of review's report makes specific reference to being in compliance with USPAP.

Thereafter, Mr. Uzemack elaborated on the deficiencies of the board of review's report. He noted that: the report and the transmittal letter were unsigned, the report lacks sufficient analysis, the report may be misleading in the representation of its data, the report does not resemble an appraisal, and it does not comply with the intent of USPAP.

Moreover, he testified that he did uncover factual errors within the report, to wit: the report fails to declare the type of appraisal that is being presented and delivered, specifically, whether the report is a complete or limited appraisal and whether the report is a self-contained or summary format; the report did not disclose the intended use or user of the report which is a requirement under USPAP; an erroneous and misleading neighborhood description that focuses on the Class A market instead of the subject's Class C market; the report has contradictory statements regarding the subject property's age; the report contains a weak and underdeveloped highest and best use analysis; an inappropriate unit of measure was used in the land sale analysis of the cost approach; and the usage of leased fee land sales instead of fee simple sales without any explanation for such a usage.

He further stated that in the income approach, the report indicates that the rental comparables were obtained from public record data. However, Mr. Uzemack could not recall from his appraisal experience any sources of rental data that can be drawn from public data. Therefore, he could not reconcile where the data would have been obtained. In addition, he stated that the data

were not misleading, but was brief leaving the rental data questionable. He also indicated that an unsupported vacancy and collection loss of 10% was used. The report's rental data indicate a range of vacancy from 17% to 50%. However, the report did not enumerate the reasoning for choosing the 10% vacancy rate contrary to its factual data. He also states that there is no explanation for the report's usage of an allowance of 40% for expenses.

Mr. Uzemack's review of the report's sales comparison approach indicated that a number of the sales used he considered inappropriate because of their non-arm's-length nature as reported by the same reference source articulated in the board's report. The report identifies the COMPS service as one of the reference sources for the information used in the sales comparison approach. Therefore, Mr. Uzemack indicated that he also made reference to this source and found that six of the seven sales contained an error that would make them less than good selections as comparable properties.

Specifically, with copies of the COMPS service's sheets for each sale to refresh his recollection, he testified that as to sale #1 the sale price was $129,528,000, but the mortgage balance was identified as $131,500,000, which is uncommon in the office building market and unexplained by the report. In addition, as to sale #1, the COMPS service identifies it as a private sale which Mr. Uzemack indicated meant that there was probably no market exposure time and thereby not an arm's length transaction. As to sale #2, he stated that this building is a Class A building and a leased fee sale conducted without real estate brokers according to COMPS; however, this information was not disclosed to the reader. As to sale #3, he stated that the property is the former Civic Opera House that in his opinion was not at all compara-

ble to the subject. Moreover, according to the COMPS service, it involved a partial interest holder in the property as the buyer. However, this information was also not disclosed or explained in the board's report.

As to sales #4 through #7, Mr. Uzemack stated that there was a definite lack of- analysis. Specifically, as to sale #6, there were no brokers involved in this transaction; thereby, leaving it suspect. In conclusion, he testified that the board's report: did not comply with good appraisal technique, did not set forth in a meaningful manner the assumptions and information, and contained a lack of analysis as well as insufficient data to support any of the values opined therein and to arrive at any degree of comparability. Thus, he stated that the report is misleading to the reader. As to the 2.5:1 constitutional argument, the Property Tax Appeal Board permitted the parties to submit legal briefs on this issue.

The appellant argued that the 1970 Illinois Constitution requires that the highest assessment level in the highest class should not exceed two and one-half times the lowest level of assessment of the lowest class as determined by the Illinois Department. of Revenue's (hereinafter department) annual sales ratio studies.

Article IX, Section 4 of the Constitution provides, in part:

> (b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that

> county. . . . ILL. CONST., art. IX, § 4(b) (emphasis added).

Moreover, the appellant argued that the lowest level of assessment of the lowest class should be determined using the department's three-year average median level of assessment. Currently, Class 2 residential property has the lowest level of assessment at 16 of market value in Cook County's classification scheme. The Cook County three-year median levels of assessment for Class 2 residential property as determined by the department for 1997 and 1998 were 10.09% and 10.08%, respectively. Therefore, applying the two and one-half times constitutional limitation, the appellant argued that the level of assessment should not exceed 25.20% (two and one-half times 10.08%) for an assessment not to exceed $3,645,735 for the 1997 and 1998 assessment years.

In further support of this contention, the appellant argued that the continuous and systematic underassessment of Class 2 residential property for a period of at least ten years has unfairly shifted the tax burden according to the Department of Revenue's sales ratio reports.

Further, the appellant indicated that in a recent case, Cook County Board of Appeals v. Property Tax Appeal Board & Glen Lefkowitz, Gen. No. 98 CoTab 0001 (1999), the Cook County Circuit Court affirmed the PTAB's use of the department's studies in determining the proper assessment level for Class 2 property. In that case, the PTAB applied the department's 1996 three-year average median level of assessment for Class 2 residential property of 10.04%, not the ordinance level of 16%, to the property's market value. The appellant argued that the assessing authorities have created a de facto level of assessment for Class 2 property, which is illustrated by

the department's studies. The appellant claims the de facto level of assessment should also be subject to the two and one-half times constitutional limitation.

Finally, at the hearing, the appellant argued that because the Property Tax Appeal Board (hereinafter PTAB) applies the results of the department's studies in all other Illinois counties, uniformity dictates that it apply those results-in-Cook County as well. Based on the foregoing, the appellant requested an assessment not to exceed $3,645,735 for the 1997 and 1998 assessment years.

In its brief, the board of review (hereinafter "the board") reasoned that: (1) the Illinois Constitution's two and one-half times provision does not create a cause of action for review of an individual assessment; (2) there is no legal basis for the appellant's requested measure of damages; and (3) the appellant's theory would strip Cook County's classification ordinance of all meaning.

The board first argued that the language and history of the two and one-half times constitutional provision does not create a cause of action for an assessment reduction for an individual taxpayer. Thus, the board argued, the two and one-half provision contained in Section 4 (b) applies only to a class of assessments and not to a single, individual assessment. The board further points out that the Property Tax Code provides a remedy to enforce the two and one-half times limitation. Under Section 13-10 of the Property Tax Code, the department is authorized to order the reassessment of all or any class of property that the department finds has not been assessed in substantial compliance with law. 35 ILCS 200/13-10.

The board also contended that the reports and explanation of the Constitutional Convention do not indicate that the two and one-half times provision is applicable to

individual assessments. The board relies upon the following comment from the floor debates:

> VICE-PRESIDENT LYONS: . . . . What this thing here contemplates is that the lowest--the highest class shall not, have a ratio of assessed to market., in excess of two and a half times the ratio of assessed to market of the lowest class; so if the lowest class is on the rolls for 30 percent, as a class—as a group—forgetting about individual parcels, out of a million three we have in Cook County—but if the lowest class is on the rolls for 30 percent, the highest class could therefore not be on the rolls for more than 75 percent as a class. That's all that this means. That's all it's calculated to do.

3 Record of Proceedings, Sixth Illinois Constitutional Convention, 1904. The Constitutional Convention was concerned with classification as a concept, not "policing" the administration of assessment classes once they were legislatively established. Hoffman v. Clark, 69 Ill.2d 402, 372 N.E.2d 74 (1977); LaSalle National Bank v. County of Cook, 57 Ill.2d 318, 312 N.E.2d 252 (1974). The board argued that the two and one-half times provision is intended as a limitation upon the legislative creation of assessment classes and does not create a cause of action for an individual assessment. In the Matter of the Cook County Collector (American Can Company), 1978 Obj. No. 959 and 1979 Obj. No. 984 (Cook Cty. Cir. 1989).

The board maintained that the appellant's requested relief (multiplying the de facto Class 2 level of assessment by two and one-half times and then debasing the subject's market value by that percentage) is contrary to reason and common sense.

The board's third argument is that the appellant's contentions would nullify Cook County's classification ordinance. The ordinance currently provides for five major classes of property with six levels of assessment, ranging from 16% to 38% of market

value. Under the appellant's theory, the Cook County level of assessment for Class 2 property should be 10.09% for 1997 and 10.08% for 1998. Thus, use of any level above 25.20% (two and one-half times the lowest classification of 10.08%) would be unconstitutional. This would effectively cause the county's classifications of Class 3, 4 and 5 .properties to be unconstitutional because their ordinance levels, which range from 33% to 38%, would all be above the 25.20% level.

At the hearing, the board argued that the appellant's reliance on the department's studies violated Section 1910.50(c) (3) of the Official Rules of the Property Tax Appeal Board (hereinafter the "Official Rules"), which provides in part: the Board [PTAB] may consider competent evidence admitted pursuant to this Part, if any, which is relevant to the level of assessment applicable to the subject property under the Illinois Constitution, the Illinois Property Tax Code, and the Cook County Real Property Assessment Classification Ordinance, as amended.

Under this rule, the board claims the appellant failed to meet the burden of proof necessary to establish the accuracy and reliability of the department's studies because it did not offer testimony in support of the studies.

The board also submitted the current Cook County classification ordinance that provides for an assessment level of 38% for Class 5A property such as the subject. Lastly, the board submitted a report entitled The Illinois

Ratio Study for Commercial and Industrial Properties: Review and Recommendations, by Robert J. Gloudemans and Alan S. Dornfest (hereinafter the "Dornfest Report"). The Dornfest Report reviewed and evaluated the procedures and methodology used by the department in its annual sales ratio studies.

Based on the foregoing, the board of review requested that the subject's assessments be confirmed.

PTAB'S ANALYSIS

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. Property Tax Appeal Board Rule 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length

sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. Property Tax Appeal Board Rule 1910.65(c).

Having considered the evidence and testimony presented, the Board concludes that the appellant has satisfied this burden and that a reduction is warranted.

In determining the fair market value of the subject property, the Property Tax Appeal Board examined both of the appellant's two appraisals as well as the board of review's appraisal report. Each document used the three approaches to value in valuing the subject property. The Board finds that the appellant's appraisal prepared by

Mr. Collins with supporting testimony is the best evidence of the subject's market value.

The Board accorded diminished weight to the board of review's appraisal report due to: the lack of an explanation regarding the subject's inspection; the lack of a market analysis addressing the Class C office market similar to the subject; the lack of verification of data provided by other sources; the lack of enumerated adjustments to suggested comparable properties; the use of questionable allocation of values for the subject in contrast to the report's articulated, factual data; the use of poor or inferior land, rental, and sales comparables; and the lack of any reconciliation of the three approaches to value.

The Board further finds persuasive the additional reasoning articulated at length by the appellant's rebuttal.

The Board finds that the Collins appraisal submitted by the appellant utilized the traditional approaches to value in determining the subject's market value. The Board finds this appraisal to be persuasive for the appraiser: has had experience in appraising commercial properties; personally and thoroughly inspected the subject property and reviewed the property's history; thoroughly analyzed the office building market in the Chicago Loop; utilized appropriate market data in undertaking the three approaches to value; accorded appropriate consideration to the subject's actual rents as well as market rents in the income approach to value; undertook a dual analysis of capitalization rates initially using the rates from the improved sales and secondly using market-derived rates; accorded the subject's other income derived within the building such as storage, parking, and basement rents appropriate weight; and

lastly, verified the data regarding the sales comparables while providing sufficient detail regarding each sale.

In reviewing the appellant's Collins appraisal, the appraiser accords most weight to the income approach with secondary emphasis on the sales comparison approach to value. Under the income approach, the appraiser estimated the subject's market value to be $14,640,000, while under the sales comparison approach, the estimated value was $13,930,000. Therefore, the Board finds that the subject's market value as of the 1997 assessment date to be $14,460,000.

The Board further finds that the best and only evidence of market value for the 1998 appeal was the parties' 1997 evidence submissions. Specifically, the appellant submitted copies of both of the 1997 appraisals, while the board of review's evidence consisted of a one-page memorandum that adopted and stood on its 1997 evidence. Moreover, the appellant's attorney argued that the 1997 and the 1998 market values for the subject were identical because these two years were within the same triennial reassessment period. The Property Tax Appeal Board construes the board of review's memorandum as concurring with the appellant's position. Therefore, the Board finds that the subject's market value for the 1998 assessment year to be $14,450,000.

The Property Tax Appeal Board now turns to the appellant's argument regarding the 2.5:1 constitutional issue.

Cook County is presently the only county in the state that classifies property for assessment purposes. It is authorized to do so under Article IX, Section 4 of the 1970 Illinois State Constitution, which permits counties having over 200,000 inhabitants to establish such a system, provided certain restrictions are met. For any

county that elects to classify, the constitution requires that all property within the same class be treated equally and that classifications be based on reasonable criteria. It also states that the level of assessment of the highest class in a county shall not exceed two and one-half times the level of assessment of the lowest class in that county. ILL. CONST., art. IX, § 4(b)

The general uniformity provisions of the Illinois constitutions of 1848 and 1870 were interpreted as prohibiting any form of property classification. However, assessors often ignored the ban and developed classification schemes, where residential property was usually under assessed, while commercial and industrial parcels were over assessed.

Until 1974, Cook County had an unofficial classification system that dated back to the Depression. Through the years, it came to be generally accepted by everyone, except the courts. In Bistor v. McDonough, 348 Ill. 624 (1932), the Illinois Supreme Court held that "[t]he rule of uniformity applies equally in the burden of taxation, both as to the assessment of property and as to the rate of tax, and it requires that one person shall not be compelled to pay a greater portion of the taxes, according to the value of his property, than another." The likelihood that this system would be subject to increasing attacks in the courts and the possibility that it might eventually be struck down fueled debate at the 1969-1970 State Constitutional Convention. In fact, convention delegates generally understood that a new constitution could not have passed if it did not "in some way, maybe with some restrictions, make legal the de facto classification in Cook County." 3 Record of Proceedings, Sixth Illinois Constitutional Convention, 1898; Hoffman v. Clark, 69 Ill.2d 402, 413-4, 372 N.E.2d 74 (1977).

After ratification of the new constitution in 1970, the Cook County Board of Commissioners enacted the state's first de jure classification ordinance four years later. Amended periodically over time, the Cook County Real Property Classification Ordinance now includes six regular classes of property based solely upon use and several classifications designed to provide incentives for development, such as for new construction, substantial rehabilitation or reoccupation of industrial, commercial or low income housing property, or the remediation of contaminated property.

For classes that are defined by property use, the current ordinance provides for the following assessment levels:

CLASS	DESCRIPTION	ASSESSMENT LEVEL
1	Unimproved land	22%
2	Residential property with six units or less, including condos and coops regardless of the number of units; also farmland	16%
3	Residential property with more than six units	33%
4	Not-for-profit ownership and use	30%
5a	Commercial property	38%
5b	Industrial property	36%

Except in counties that classify property, real property is to be assessed at 33 1/3% of its market value. 35 ILCS 200/9-145. Since assessment levels vary from county to county, either above or below the statutory level, the legislature has charged the Illinois Department of

Revenue with equalizing assessments among the State's 102 counties so that the assessed valuation of property in each county (including Cook County) is, as a whole, 33 1/3% of market value.

The current statutes governing equalization outline the duties and responsibilities of the department. Under the law, the department annually calculates an equalization factor or "multiplier" for each county. One necessary component in the equation is the median level of assessments in the county. The multiplier is the factor by which the median level of assessments must be multiplied to reach the statutory required 33 1/3% of market value. The multiplier may raise or reduce the aggregate assessed valuation of property.

The process is more complicated in Cook County, which classifies property. For Cook County, the department determines a median level of assessments county wide for properties in Classes 1, 2, 3, 5a, and 5b. From these levels, the department calculates an overall county "urban weighted" level of assessments. In Cook County, as in the other 101 counties, the overall level of assessments must be equalized at 33 1/3% by a state multiplier.

To determine the median level in any county, the department relies upon sales ratio studies that it prepares. These studies are prepared pursuant to the Property Tax Code that directs the department to "monitor the quality of local assessments by designing and preparing sales ratio studies." 35 ILCS 200/17-10. In performing these studies, the department may use any "means as it deems proper and reasonable." 35 ILCS 200/17-5. For Cook County, median levels are calculated for any class of property with 25 or more sales of properties. The data relied upon by the department in the studies come from real estate transfer declarations.

The studies compare actual sale prices to assessed valuations to determine the percentage relationship between the valuation placed on intra-county assessed property and its actual market value. For example, a property in any jurisdiction outside of Cook County assessed at $33,000 (reflecting a market value of approximately $99,000) that recently sold in an "arm's length" transaction for $120,000, indicates a ratio of 27.5%, well below the mandated, statutory level of 33 1/3%.

As stated above, the Property Tax Code requires that real property be assessed at a uniform percentage of market value. The studies, therefore, are used in the computation of inter-county equalization factors, which the department uses for equalizing the level of assessment among the counties. Inter-county equalization of assessments is necessary to maintain the statutory assessment level throughout the state.

Therefore, the Property Tax-Appeal Board must next determine whether to apply Cook County's prescribed ordinance level of 38% for Class 5a property (like the subject), the department's median level of assessment for that class, or the appellant's suggested levels of assessment based on the Constitution's mandated two and one-half times limitation.

To reiterate, the Illinois Constitution provides in part that:

> . . . The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class inthat county. ILL. CONST., art. IX, §4 (b)

By statute, the PTAB is directed to determine the "correct assessment of property which is the subject of an

appeal" before it. 35 ILCS 200/16-180. PTAB decisions must "be based upon equity and the weight of the evidence." 35 ILCS 200/16-185. Illinois courts have held that the PTAB's enabling statute vests it with the authority to construe statutes and decide issues of law when resolving valuation issues. Hall v. Property Tax Appeal Board, 98 Ill.App.3d 824, 424 N.E.2d 375 (3d Dist. 1981).

The PTAB finds the 1970 Illinois Constitution mandates that the highest level of assessment should not exceed two and one-half times the lowest level of assessment as determined by the de facto levels of assessment in any county that elects to classify property. To hold otherwise would allow a county to set ordinance levels of assessment within the Illinois Constitution's two and one-half times limitation and then under assess one class of property to the detriment of another class. Such a result is inequitable and violative of the constitution's two and one-half times provision.

Since the constitution does not specify whether the two and one-half times provision refers to the ordinance or the de facto level of assessment, a review of the convention debates is in order. A full reading of those debates indicates that the constitutional delegates intended the "level of assessment" to mean the de facto level. Nowhere do the delegates discuss the statutory or ordinance levels of assessments as they relate to the two and one-half times provision. In fact, much of the discussion was whether to use the median level of assessment or the average level of assessment, both of which are measures of the de facto level of assessment. Consider the following exchange during the convention:

> MR. CONNOR: What does the term "level of assessment" mean in the article? In other words, if passed, we would have—the level of assessment

of the highest class would be two and one half times the level of assessment of the other class. What do you plan to use as the level of assessment?

MR. ELWARD: Well, I would suppose the lowest in any category. The highest in any category could not be more than two and a half times the lowest, in any category.

MR. CONNOR: Well, how do you determine the level, since the median is—according to you, at least—not acceptable as an average, or a mode, or what?

MR. ELWARD: The median level of assessment here just means there was many above that figure, as there were below.

MR. CONNOR: I understand what the word median means, I'm talking now about section 4.1; it uses the expression, "the level of assessment."

MR. ELWARD: You're talking about the language of the report—

MR. CONNOR: Of the section.

MR. ELWARD: —of the section.

MR. CONNOR: What do we plan to use there?

MR. ELWARD: Well, I would say that you're going to have to use the lowest figure. Now you talk about level of assessment; it may be that the court would sustain an average figure.

(emphasis added)

3 Record of Proceedings, Sixth Illinois Constitutional Convention 1903 (1970). If Delegates Connor and Elward contemplated application of the two and one-half times

limitation to the statutory or ordinance levels of assessment, there would have been no need to discuss whether a "median" or "average" level of assessment should be used. The ordinance levels would be set and no discussion of the average or median analysis would have been necessary. Conversely, if the delegates believed application of the limitation to the de facto levels of assessment was appropriate, only then would the issue of whether to use the average and median level become relevant. Therefore, the PTAB finds that a reading of the constitutional debates indicates that the delegates contemplated use of the de facto level of assessment only.

These conclusions are further supported by a report submitted during the constitutional convention by the Committee on Revenue and Finance. See Sixth Illinois Constitutional Convention, Committee on Revenue and Finance Proposal Number 2, 2049-2128 (1970). In recommending that certain counties be allowed to classify property with the two and one-half times assessment level limitation, the committee relied on the 1966 Illinois PropertyTaxStatistics, a publication of the department. Committee Report at 2110. The data cited include the median levels of assessment of different groups of property in Cook County and the City of Chicago. In fact, the term "median" is defined in a footnote. The report clearly indicates that the delegates were aware of the department's studies and their vital role in the state's assessment and equalization processes when the new constitutional provision was debated and ultimately adopted by the full convention.

The board's interpretation of Mr. Lyons' isolated statement is misplaced and taken out of context. His statement, "forgetting about individual parcels," does not mean that the two and one-half times limitation is not

applicable to an individual parcel within a classification. Mr. Lyons' declaration merely indicates that the sales to assessment ratio of an individual parcel would not be multiplied by two and one-half times to determine the highest level of assessment. The PTAB finds that Mr. Lyons' statement focused on the fact that the highest classification of properties, as a group of class, cannot have a ratio of assessment to market value that is in excess of two and one-half times the ratio of assessment to market value of the lowest classification of properties, as a group or class.

Next, the PTAB finds the board's argument that the two and one-half times provision does not create a cause of action for an individual assessment is also without merit. The appellant has not utilized the constitutional provision as a cause of action. Rather, the appellant appealed his assessment to the PTAB pursuant to the Property Tax Code and the Official Rules. The taxpayer did not file suit in the circuit court where such a cause of action would be needed, but instead, has requested the PTAB to apply the constitutional limitation in consideration of the relief to be granted in the appeal and not. as a cause of action to grant the PTAB authority to hear the matter.

Even if the appellant was required to state a cause of action based on the two and one-half times provision, the board's position would be without merit. The board relied on a Cook County Circuit Court decision; however, a subsequent First District Appellate Court decision recognized just such a cause of action. In the Matter of Rosewell v. U.S. Steel, 86 Ill.App.3d 117, 407 N.E.2d 924 (1st Dist. 1980). After finding that the appellant failed to prove constructive fraud, the appellate court did not address the appellant's argument based on

the constitutional provision requiring that classifications "shall be reasonable and assessments shall be uniform within each class." ILL. CONST., art. IX, §4(b). However, the trial court relied upon the department's studies in finding that "the constitutional two and one-half times requirement had been exceeded by three percent." U.S. Steel at 128, 935. While the trial court found a three percent variation was within a "rule of reason" and the two and one-half times constitutional limitation was not violated, it did recognize that such a cause of action was possible.

Based on equity and a review of the debates surrounding the Illinois Constitution's two and one-half times provision, the PTAB finds that the level of assessment for the highest class must not exceed two and one-half times the level of assessment of the lowest class as determined by the department's de facto levels of assessment and not the ordinance levels, as established by Cook County's classification scheme. The next issue, therefore, is to determine the lowest de facto level of assessment.

The PTAB finds that the results of the department's sales ratio studies provide the best evidence of the de facto level of assessment for the lowest class of property. The Property Tax Code allows the PTAB to establish by rules an informal procedure. 35 ILCS 200/16-180. Section 1910.50(c) (2) of the Official Rules permits the agency to consider evidence of the appropriate level of assessment for Class 2 properties in Cook County, including:

A) the Department of Revenue's annual sales ratio studies for Class 2 property for the previous three years; and

B) competent assessment level evidence, if any, submitted by the parties pursuant to this Part.

Additionally, for all other classes of property in Cook County, the PTAB may consider "competent evidence" which is deemed relevant to the level of assessment issue under the Illinois Constitution, the Property Tax Code, and the Cook County classification ordinance. Official Rules §1910.50(c) (3).

In these appeals, the appellant requested that the results of the department's studies be used to determine the de facto level of assessment. The department's sales ratio studies have withstood court scrutiny in Cook County. In two equalization cases, the Illinois Supreme Court upheld the methodology employed by the department in preparing the studies. In Airey v. Department of Revenue, 116 Ill.2d 528, 508 N.E.2d 1058 (1987), the court found that the department followed the statutory directives when preparing the studies and the department's methodology was further buttressed by the standards of the International Association of Assetsing Officials. Two years later, in Advanced Systems, Inc. v. Johnson, 126 Ill.2d 484, 535 N.E.2d 797 (1989), largely the same array of arguments was raised under the claim that the department's action constituted a failure to exercise its statutorily required "considered judgment." The court came to the same conclusion as in Airey and upheld the department.

In one case, however, In re Application of Rosewell v. United States Steel Corp., 106 Ill.2d 311, 478 N.E.2d 343 (1985), the supreme court did not accept the sales ratio studies as sufficient proof. The U.S. Steel case was a tax objection case where tha taxpayer wanted to use the department's studies to establish the level of assessment for class 5 industrial property. The court found that the sales were neither random nor representative and were not appropriately adjusted and edited to establish

constructive fraud, the burden required to overcome the assessor' s valuation.

U.S. Steel remains an anomaly as the only reported assessment decision in which Illinois courts have not accepted the department's studies as reliable evidence of the median level of assessment. Moreover, the county's assertion that the studies were defective went uncontradicted and unchallenged because the department was not a party in the appeal, and thus, could not defend its methodology. Furthermore, the taxpayer was required to demonstrate that actual or constructive fraud existed, a burden of proof that was repealed in 1995 by Public Act 89-126. See James W. Chipman, A Rock, a Hard Place and a Fair Level of Assessment, Illinois Tax Facts, Nov. 2000, at 2.

When applying the level of assessment in any other Illinois county, the PTAB uses the department's study for the three most recent years preceding the tax assessment year at issue. Commonwealth Edison Co. v. Property Tax Appeal Board, 102 Ill.2d 443, 468 N.E.2d 948 (1984); Board of Review of Grundy County v. Property Tax Appeal Board, 201 Ill.App.3d 999, 559 N.E.2d 504 (3d Dist. 1990)

According to the department, the 1997 and 1998 Cook County three-year median levels of assessments for Classes 1, 2, 3, 5a and 5b properties were, in order, as follows: 1997: 11.97%, 10.09%, 24.43%, 31.03% and 34.47%; and for 1998: 11.58%, 10.08%, 23.50%, 33.77% and 30.41%. Thus, the lowest de facto levels of assessment in Cook County for 1997 and 1998 were 10.09% and 10.08%, for Class 2 property.

The board claimed that the appellant failed to prove the accuracy and reliability of the department's studies when it failed to provide witnesses in support of the

studies. The PTAB finds this argument is without merit. The results of the department's sales ratio studies are prima face evidence of the de facto levels of assessment. Will County Board of Review v. Illinois Property Tax Appeal Board, 100 Ill.App.3d 506, 426 N.E.2d 1238 (3d Dist. 1981). To require each appellant in each PTAB appeal to present multiple witnesses necessary to testify concerning the department's studies would nullify the agency's statutory directive to establish an informal procedure and to resolve appeals in a speedy fashion. 35 ILCS 200/16-180. Furthermore, it is not required under Illinois case law. See Wenzel v. Chicago & Northwestern Railway Co., 28 Ill.2d 205, 190 N.E.2d 780 (1963).

The PTAB systematically uses the results to determine the proper de facto assessment levels for properties located outside of Cook County and finds it should do so in that jurisdiction as well. Furthermore, Section 1910.50(c)(2) of the Official Rules

specifically allows the PTAB to to consider the de facto asssessment level for Class 2 property as determined by the department's studies, a practice recently confirmed by the Cook County Circuit Court. In Cook County Board of Appeals v. Property Tax Appeal Board & Lefkovitz, Gen. No. 98 CoTab 0001 (1999), the circuit court found the PTAB's decision, in which the department's three-year median level of assessments for Class 2 property was used to determine the correct assessment, was not against the manifest weight of the evidence.

Finally, the PTAB notes that it may take official notice of the results of the department's 1997 and 1998 sales ratio studies for Cook County as matters within the PTAB's "specialized knowledge and expertise." Official Rules §1910.90(i). An administrative agency may rely on its own "experience, technical competence, and special-

ized knowledge." 5 ILCS 100/10-40; See Ekco Glaco Corp. v. Illinois Environmental Protection Agency, 186 Ill.App.3d 141, 542 N.E.2d 147 (1st Dist. 1989). The PTAB also finds that courts have taken judicial notice of findings and guidelines issued by the department as public records. Dietz v. Property Tax Appeal Board, 191 I1l.App.3d 468, 476, 547 N.E.2d 1367, 1372 (4t Dist. 1989). The Illinois Supreme Court has found the department's studies reliable in numerous other cases. People ex rel. Hillison v. Chicago Burlington and Quincy R.R. Co., 22 Ill.2d 88, 174 N.E.2d 175, (1961); People ex rel. Wenzel v. Chicago and North Western Railway Co., 28 Ill.2d 205, 190 N.E.2d 780 (1963); People ex rel. Musso v. Chicago Burlington and Quincy R.R. Co., 33 I11.2d 88, 210 N.E.2d 196 (1965). Based on its experience, technical competence, and specialized knowledge," the PTAB finds the department's studies to be the most reliable evidence on the level of assessments in Cook County for 1997 and 1998.

The PTAB finds unpersuasive the Dornfest Report submitted by the board that evaluated the department's studies. The report does not evaluate the accuracy and reliability of the department's studies of Class 2 property, which provides the lowest de facto level of assessment herein. The report fails to present any competent evidence indicating the proper assessment level, pursuant to Section 1910.50(c) (3) of the Official Rules. The report is devoid of any empirical evidence indicating that the department's studies produced inaccurate assessment levels. The report is merely an analytical review of the department's procedures and methodology. Significantly, the report fails to present any evidence indicating that the department's studies would result in different outcomes if the report's recommendations were implemented. The Illinois Supreme Court has found such

omissions fatal in proving the department's studies are flawed. Further, the court has found that most of the department's procedures criticized in the Dornfest Report are in accord with the authority granted by the legislature. Airey v. Department of Revenue, 116 Ill.2d 528, 508 N.E.2d 1058 (1987); Advanced Systems, Inc. v. Johnson, 126 Ill.2d 484, 535 N.E.2d 797 (1989).

Finally, the Dornfest Report acknowledges "of necessity, for the most part this report focuses on what is wrong with the Illinois ratio study. There are, however, many positive aspects to the study. We have no reason to doubt that [d]epartment staff conduct the study both competently and conscientiously." Based on the foregoing, the PTAB finds that the report fails to impeach the reliability of the department's studies.

The board's argument that use of the department's studies with the two and one-half times limitation would create absurd results contrary to reason and common sense are unpersuasive. The board also argued that the appellant's contentions would invalidate the Cook County classification ordinance. The PTAB understands the argument to be that the Class 3, 4 and 5 ordinance levels of assessment of 33%, 38% and 36%, respectively, would be stricken due to the Class 2 de facto level of assessment and the Illinois Constitution's two and one-half limitation. The board further argued that such application would invalidate the findings of the department's sales ratio study for the Class 5a and 5b de facto levels of assessment and create a revision of the levels of assessment.

The PTAB finds the board's arguments are unsupported and without merit. Pursuant to PTAB's rules, specifically Section 1910.90(i), the PTAB takes official notice that the department's studies clearly document

that the Cook County Assessor and the Cook County Board of Review (and its predecessor, the Board of Appeals) have under assessed Class 2 property for at least the past ten years which means that the level of assessment of 16% as set forth in the Cook County classification ordinance has been consistently ignored over the same period of time. The department's studies have revealed de facto levels of assessment ranging from 9.38% to 10.26%, always less than two-thirds of the required 16% ordinance level of assessment. Such a profound history of under assessment in one class appears to establish the very inequitable redistribution of the tax burden that the board claims would happen if the PTAB accepts the appellant's argument in these appeals.

In conclusion, the PTAB rules that: (1) the Illinois Constitution requires the level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county [ILL. CONST., art. IX, §4(b)]; (2) the actual level of assessments, as determined by the Department of Revenue's three-year median levels of assessment for 1997 and 1998 for Class 5a properties are 31.03% and 30.41%, while the levels for Class 2 properties are 10.09% and 10.08%; (3) the de facto levels of assessment for Class 5a properties, as determined by the Department of Revenue's sales ratio studies, are more than two and one-half times that of Class 2, the lowest class of properties Within Cook County's classification ordinance; (4) since the lowest class of properties have de facto levels of assessment for 1997 and 1998, of 10.09% and 10.0.8%; the levels of assessments for Class 5a properties for 1997 and 1998, should not exceed 25.23% and 25.20%; (5) since the subject property is a Class 5a property, its market value

of $14,450,000 shall be debased to a level that does not exceed two and one-half times the de facto levels for the lowest class of properties; and (6) since the current total assessments for the subject property are clearly in excess of two and one-half times the de facto levels of 10.09% and 10.08%, for the lowest class of property for the 1997 and 1998 assessment years, reductions in the subject property's assessments are warranted.

Docket No.	Parcel No.	Land	Impr.	Total
97-24242-C-3	17-09-419-001	$1,604,123	$2,041,612	$3,645,735
98-26195-C-3	17-09-419-001	$1,604,123	$2,037,277	$3,641,400

PTAB/ck333 .kpp

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

SECOND DIVISION

December 16, 2003

No. 1-01-3232

THE COOK COUNTY BOARD OF REVIEW,

Petitioner-Appellant,

v.

THE PROPERTY TAX APPEAL BOARD and THE LURIE COMPANY,

Respondents-Appellees.

97-24242-C-3 and

98-26195-C -3

Petition from the Property Tax Appeal Board

JUSTICE CAHILL delivered the opinion of the court:

We address a Cook County Board of Review (the Board) appeal challenging a decision by the Illinois Property Tax Appeal Board (PTAB). The main question we consider is whether PTAB has the authority to expand the scope of a taxpayer's appeal to include issues never raised by the taxpayer before the Cook County Board of Review. In this case, PTAB ruled that responsive pleadings of the Board on appeal raised issues PTAB was empowered to address. We conclude that, under the Administrative Review Law (735 ILCS 5/3-101 et seq. (West 2000)) and PTAB's own rules, the scope of PTAB's review and the relief it may grant is limited to the relief sought by a taxpayer before the Board. We reverse the order of PTAB applying a 25% level of assessment to the taxpayer's property and remand with directions to PTAB to apply the 38% level of assessment mandated by the Cook County Real Property Assessment Ordinance (Cook County ordinance) (Cook County Real Property Assessment Classification Ordinance, Ord. No. 80414 (amended November 6, 1997)).

The taxpayer, the Lurie Company, owner of commercial 5A property, filed an appeal with PTAB following an unsuccessful appeal before the Board. PTAB entered an order adjusting the fair market value of the property to $14,450,000. PTAB then applied a 25% level of assessment instead of the 38% applied to commercial 5A property mandated by the Cook County ordinance. The Board did not appeal PTAB's reduction of the fair market value of the property. PTAB's deviation from the Cook County ordinance was based on PTAB's review of sales ratio studies purporting to establish an underassessment trend in Cook County residential property, and on PTAB's reading of the 2 1/2 :1 ratio limitation of the

Illinois Constitution (Ill. Const. 1970, art. IX §4(b)). This limitation prohibits the assessment level of the highest classification in a county from exceeding 2 1/2 times the level applied to the lowest classification in that county.

It is undisputed that the taxpayer challenged before the Board only the fair market value assigned to its property. The taxpayer did not raise a uniformity claim before the Board based on a disparate assessment level. The Board's decision upheld the fair market value assigned by the assessor and applied the statutory 38% assessment level mandated by the Cook County ordinance.

The taxpayer then appealed to PTAB, again challenging only the fair market valuation. The only materials the taxpayer submitted were appraisal reports supporting the taxpayer's claim that the fair market value of the property was less than that assigned by the assessor and affirmed by the Board.

We conclude as we did in Cook County Board of Review v. Property Tax Appeal Board, 339 III App. 3d 529, 791 N.E.2d 8(2002) (hereinafter Bosch), that the scope of PTAB's review should have been confined to a consideration of the Board's fair market value determination. But as in Bosch. PTAB addressed and decided a new issue here. How that happened and our reasoning in rejecting PTAB's authority to do so is addressed in the balance of this opinion. Although we dispose of this appeal on the grounds that the contested issue of uniformity was not properly before PTAB, we address the arguments in support of PTAB's analysis of the uniformity issue. Our discussion of these issues is partly dicta within the context of this case. But we address the uniformity arguments because the discussion provides a context for our disposition of this appeal. We note that the discussion is based on our resolution of these issues in Bosch where they were properly raised in two cases.

The Board's materials filed with PTAB included not only appraisal reports designed to rebut the taxpayer's fair market value evidence, but also a copy of the Cook County ordinance, case law relating to the use of sales ratio studies, a report critiquing the sales ratio studies, and a copy of the "Review of the Assessment Sales Ratio Study Program for the Illinois Department of Revenue" by the International Assessing Officers.

Based on the Board's submissions, the taxpayer then asked PTAB to take judicial notice of the sales ratio studies for the years 1992-95, copies of which the taxpayer then submitted. The taxpayer also asked PTAB to take judicial notice of "any official studies subsequent to 1995 which have relevance to this appeal." The taxpayer conceded that it "did not make any claims to any particular assessment level or sales ratio study findings" in the initial appeal before the Board. But the taxpayer maintained before PTAB that the Board's submissions "have now placed the assessment level into controversy." The taxpayer also asked PTAB to take judicial notice of sales ratio studies for Class 2 residential properties. The taxpayer claimed that these studies established that residential property in Cook County was assessed at 10%, rather than the 16% required by the Cook County ordinance. The taxpayer then reasoned that, based on this 10% level of assessment for residential property, commercial property could not constitutionally be assessed at more than 25% of the fair market value.

The taxpayer renewed its request that PTAB take judicial notice of the sales ratio studies at a hearing on September 20, 2000. The Board objected, claiming that it had not been made aware of the taxpayer's request for judicial notice. The Board also objected because the sales ratio evidence was not certified.

The hearing officer declined to take judicial notice of the sales ratio studies. But, the hearing officer then ruled that the Board had placed uniformity at issue by its "voluminous" submission of documents relating to sales ratio studies. The bearing officer characterized the taxpayer's submission's as "rebuttal" evidence that "was timely submitted." The hearing officer then stated that the uniformity issue was now at issue and judicial notice was unnecessary. He said:

> "[T]he issue of sales ratios has already been entered without a checkmark on the petition that's already an issue, which this Board [PTAB] will consider. This Board has accepted evidence by both parties on that issue; and, therefore, I see no need at this juncture to take judicial notice of it. it's an issue in evidence."

We reject at the outset PTAB's and the taxpayer's argument that the uniformity issue was timely raised. The hearing officer proceeded on a theory that the Board's submissions raised the issue, allowing the taxpayer to submit rebuttal evidence. The argument also assumes that PTAB is empowered under its statutory mandate to address issues never before raised. This view overlooks PTAB's own rules and the Illinois Administrative Review Law (735 ILCS 5/3-101 et seq. (West 2000)).

The taxpayer, as a contesting party, bears the burden to submit substantive evidence to establish a lack of uniformity. 86 Ill. Adm. Code 1910.63(b) (Conway Greene CD-ROM 2002). The burden of proof does not shift unless and until the taxpayer meets its burden of going forward with substantive evidence. 86 Ill. Adm. Code 1910.63(c) (Conway Greene CD-ROM 2002). Nor can the sales ratio studies qualify as rebuttal evidence as suggested by the PTAB hearing officer. 86 Ill. Adm. Code

1910.66(b) (Conway Greene CD-ROM 2002) (rebuttal evidence shall not consist of new evidence and a party is precluded from submitting its case in chief under the guise of rebuttal evidence).

We addressed procedurally similar facts in Bosch. Bosch was a consolidated appeal in which we reviewed PTAB orders in eight tax appeals. Bosch, 339 Ill. App. 3d at 533. An issue in Bosch was PTAB's authority, if any, to deviate from assessment levels set out in the Cook County ordinance to remedy a uniformity challenge based on an interpretation of sales ratio studies generated by the Department of Revenue (the Department). We held that we could not reach this issue because the taxpayers in six of the eight cases had not timely raised it. We found that, although timely raised in two cases, the evidence was insufficient to allow appellate review. Bosch, 339 Ill. App. 3d at 534. Our analysis in Bosch applies with equal force here, where uniformity was not raised by the taxpayer:

> "The Board's submission of a report did not alter the nature of the claim in the six cases before PTAB where the taxpayers challenged only the fair market value assigned. There is evidence in the record that the Board was aware of PTAB's 'procedures,' but that knowledge, and the Board's tender of evidence in 'anticipation' of PTAB's action, cannot invest PTAB with the power to supplement the record with evidence never introduced by the taxpayers and grant relief the taxpayers never sought." Bosch, 339 Ill. App. 3d at 539.

As in Bosch, the Board's submissions here could not enlarge the taxpayer's appeal to PTAB beyond the issue of fair market valuation originally challenged. See, e.g., People ex rel Vuagniaux v. City of Edwardsville, 254 Ill.

App. 3d 407, 672 N.E.2d 40(19%) (appellate review limited to consideration of the errors raised by the property owner, where the city was not awarded by the trial court all that it sought and did not file a cross-appeal regarding those issues on which it did not prevail).

Nor does PTAB's proclaimed "routine" use of sales ratio studies authorize use of the studies here when the issue is not raised and supporting evidence is not submitted by the party bearing the burden of proof. We rejected this argument in Bosch and noted that an agency's routine practice of using certain evidence in reaching its decision does not eliminate the requirement that the evidence relied on be introduced by the party bearing the burden of proof . Bosch, 339 Ill. App. 3d at 539, citing Commonwealth Edison Co. v. Property Tax Appeal Board, 115 Ill. App. 3d 371, 379, 450 N.E.2d 780 (1983).

Our decision in Bosch also rejected PTAB's arguments relating to its authority to take judicial notice of sales ratio studies. See Bosch, 339 Ill. App. 3d at 541 (courts may not take judicial notice of sales ratio studies which represent critical evidentiary material that goes to the heart of a contested issue); Bosch, 339 Ill. App. 3d at 541 (sales ratio studies are not within PTAB's specialized knowledge or expertise). Nor does PTAB's reliance on its legislative mandate to establish an "informal procedure" and "eliminate formal rules of pleading, practice and evidence" (35 ILCS 200/16-180(2000)) allow PTAB to take judicial notice of evidentiary material not submitted by the party bearing the burden. PTAB contends, without citation to authority other than its own practices, that its "routine" use of sales ratio studies implements the informal procedure contemplated by section 16-180 of the Property Tax Code (Code) (35 ILCS 200/16-180 (West 2000)). We disagree.

PTAB stresses that its rules allow consideration of sales ratio studies in residential appeals. 86 Ill. Adm. Code 1910.50(c)(2) (Conway Greene CD-ROM 2002). PTAB maintains that the routine practice of taking judicial notice of sales ratio studies promotes consistency and fairness. PTAB also states in its brief that unrepresented taxpayers, both residential and commercial, may not be aware of the sales ratio studies or their significance and should have the benefit of their use. Setting aside a troublesome impression left by this argument—that PTAB is invested with an advocacy role for the taxpayer as part of its mandate—"routine practices" unchallenged in residential cases cannot be elevated to precedent in the appellate court where they have been challenged.

The argument also does not address an observation made in Bosch: that PTAB continues to operate as if an objection by the Joint Committee on Administrative Rules (JCAR) to a proposed PTAB rule—a rule that did not distinguish between residential and commercial appeals had not been made. It was clear from the administrative record that PTAB amended its proposed rule to address JCAR's objections. Bosch, 339 Ill. App. 3d at 545.

We must conclude that neither principles of administrative review nor PTAB's own rules grant PTAB the authority to do what it did here remedy an alleged uniformity violation never raised by the taxpayer in the original appeal before the Board or the proceedings before PTAB.

We are not persuaded that an argument proposed by an amicus that section 8-40 of the Code (35 ILCS 200/8-40 (West 2000)) must alter our analysis of this case.

Section 8-40 incorporates the Code to implement review of final administrative decisions of the Department of

Revenue. 35 ILCS 200/8-40 (West 2000). Final administrative decisions by the Department include assessment ratios and percentages promulgated for equalization purposes. See 35 ILCS 200117-5 through 17-30 (West 2000). Amicus concludes from its reading of this section of the Code that sales ratio studies must be challenged, if at all, under administrative review when first promulgated. Absent an administrative review, the studies represent final binding decisions of an agency which must be accepted in subsequent litigation without challenge. We disagree.

Amicus overlooks that the Department's equalization factor is a legislative function to which different due process requirements apply. Advanced Systems. Inc. v. Johnson, 126 Ill. 2d 484, 506, 535 N.E.2d 797 (1989). The hearing and review contemplated in section 8-40 is an information gathering forum in pursuit of legislative facts and not a "contested case" as that term is defined in the Illinois Administrative Procedure Act (5 ILCS 100/1-30 (West 2000)). Advanced Systems, 126 Ill. 2d at 506. The absence of a "contested case" makes inapplicable the "[t]rial-type procedures, including the taking of evidence subject to cross-examination," required in a contested case where individual legal rights, duties or privileges are at issue. Advanced Systems, 126 Ill. 2d at 506; 5 ILCS 100/1-30 (West 2000). We do not believe that sales ratio studies, adopted in a legislative proceeding, must be accepted without challenge in a subsequent contested case, at the heart of which is the right to cross-examination.

The amicus argument also does not address the distinction between assessment and equalization. Assessment is the process of assigning value for tax purposes to individual parcels by the local assessment officials. In re

Application of Cook County Collector, 133 I. App. 3d 208, 211, 478 N.E.2d 1119 (1985). Equalization is a statutorily mandated function by which the Department adjusts the aggregate assessed valuations of property in each county so that in every county the ratio of aggregate assessed valuations to fair cash value is 100%. Johnson, 133 Ill. App. 3d at 211. Equalization was not intended to adjust individual assessments. Johnson, 133 Ill. App. 3d at 211. The Department's equalization function is not intended to be applied to achieve both a statewide balance and to adjust individual assessments. Our supreme court has addressed an analagous issue in a procedurally similar context involving standards promulgated by the Illinois Pollution Control Board.

In Granite City Division of National Steel Co. v. Illinois Pollution Control Board, 155 Ill. 2d 149, 613 N.E.2d 719 (1993), the distinction between standards promulgated by an administrative agency and the "calculated criterion" used to set those standards is clarified:

> "'Once a standard has been established by Board regulations, and it has withstood any appeals, the validity of that number itself cannot be subsequently challenged in a contested case setting. However, an Agency calculated criterion can. Because criteria numbers will be generated without the benefit of statewide public participation, and because application necessarily require[s] the use of assumptions and professional judgment about which reasonable experts may disagree, the validity and correctness of application of a criterion must be reviewable by the Board on a case-by-case basis when the criterion is applied to a particular situation. ~ Board Order, at 30." Granite City, 155 Ill. 2d at 176.

We believe the distinction drawn in Granite City is persuasive when we consider a statewide equalization factor on the one hand and the sales ratio studies that underpin that factor on the other. The distinction is in accord with those drawn in cases such as Airey v. Department of Revenue, 116111. 2d 528, 537-38, 508 N.E.2d 1058 (1987), and Advanced Systems. Inc. v. Johnson, 126 Ill. 2d 484, 496, 535 N.E.2d 797 (1989), on the one hand, and a contested case In re Application of Rosewell, 106 Ill. 2d 311,478 N.E.2d 343 (1985), on the other.

We conclude that the taxpayer here did not timely raise a uniformity challenge so as to justify the relief granted. We remand with directions to PTAB to apply the 38% level of assessment contained in the Cook County ordinance. We need not consider PTAB's use of sales ratio studies as authority to deviate from the Cook County ordinance or PTAB's reading of the 21/2: 1 constitutional ratio limitation in light of our conclusion.

Reversed and remanded with directions.

GREIMAN and McBRIDE, JJ., concur.

97717

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

March 26, 2004

Mr. Patrick C. Doody
Field & Golan
70 West Madison Street
Suite 1500
Chicago, IL 60602-4206

No. 97717— The Cook County Board of Review, respondent, v. The Property Tax Appeal Board et al. (The Lurie Company, petitioner). Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 19, 2004.

State of Illinois

OFFICIAL RULES
OF THE
PROPERTY TAX
APPEAL BOARD

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MAX E. COFFEY
Chairman

JAMES W. CHIPMAN
Executive Director

www.state.il.us/agency/ptab

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Section 1910.5 Construction and Definitions

a) Standards. This Part is to be construed in accordance with the appropriate provisions of the Statute on Statutes [5 ILCS 70].

b) Definitions. The following words and phrases, whenever used in this Part, include in their meaning the definitions set below:

1) Board - Property Tax Appeal Board.

2) The Code - Property Tax Code [35 JLCS 200].

3) Real Property - The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon, including all oil, gas, coal and other minerals in the land and the right to remove such oil, gas, and other minerals, excluding coal, from the land, and all rights and privileges belonging or pertaining thereto, except where otherwise specffied by the Code. Included therein is any vehicle or similar portable structure used or so constructed as to permit its use as a dwelling place, if the structure is resting in whole on a permanent foundation. (Section 1-130 of the Code)

4) Farm—When used in connection with valuing land and buildings for an agricultural use, any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to, hay, grain, fruit, truck or vegetable crops, flori-culture, mushroom growing, plant

or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming. The dwellings and parcels of real property on which farm dwellings are immediately situated shall be assessed as a part of the farm. Improvements, other than farm dwellings, shall be assessed as a part of the farm and in addition to the farm dwellings when such buildings contribute in whole or in part to the operation of the farm. For purposes of this Part, "farm" does not include property which is primarily used for residential purposes even though some farm products may be grown or farm animals bred or fed on the property incidental to its primary use. The ongoing removal of oil, gas, coal or any other mineral from property used for farming shall not cause that property to not be considered as used solely for farming. (Section 1-60 of the Code)

5) Fair Cash Value - The amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller. (Section 1-50 of the Code)

6) PIN; Property Index Number; Permanent Index Number; Parcel Index Numbering - A number used to identify a parcel of property for assessment and taxation purposes. The index number shall constitute a sufficient description of the property to which it has

been assigned, wherever a description is required by the Code. (Section 1-120 of the Code)

7) Taxing District—Any unit of local government, school district or community college district with the power to levy taxes. (Section 1-150 of the Code)

8) Party—Either the contesting party (appellant), the board of review (appellee), or the intervenor(s).

9) Attorney—Any individual admitted to the practice of law in this State as set forth in the Attorney Act. [705 ILCS 205]

10) Brief—A document which contains a summary of the facts, the pertinent laws, and an argument on how such laws apply to the facts supporting a particular position.

11) Quadrennial Assessment—The general assessment of real property required by law to be made once every four years. (Sections 1-65, 9-215, 9-220 and 9-225 of the Code)

12) Triennial Assessment—In counties of 3,000,000 or more inhabitants, the general assessment of real property required by law to be made once every three years. (Section 9-220 of the Code)

c) All references to the board of review shall be deemed to include the Cook County Board of Appeals until the first Monday in December, 1998.

d) All references in these rules to property record card shall be deemed to include, as a substitute, a prop-

erty characteristic printout detailing the property's physical characteristics.

e) Interpretation. The definitions listed above are intended only as an aid to interpretation of the Official Rules of the Property Tax Appeal Board (this Part).

Section 1910.10 Statement of Policy

a) The Property Tax Appeal Board shall consist of five members appointed by the Governor, with the advice and consent of the Senate. The Chairman of the Property Tax Appeal Board shall be designated by the Governor with the advice and consent of the Senate. A vacancy in the membership of the Board shall be filled in the same manner as original appointments are made.

b) The Property Tax Appeal Board shall determine the correct assessment prior to state equalization of any parcel of real property which is the subject of an appeal, based upon facts, evidence, exhibits and briefs submitted to or elicited by the Board. The state equalization factor is set by the Department of Revenue pursuant to Section 17-5 of the Property Tax Code.

c) Only a taxpayer or owner of property dissatisfied with the decision of a board of review as such decision pertains to the assessment of his property for taxation purposes, or a taxing body that has a tax revenue interest in the decision of the board of review on an assessment made by any local assessment officer, may file an appeal with the Board.

d) The Property Tax Appeal Board shall consider appeals as hereinafter provided and revise the

assessment of any particular parcel of real property when it finds such assessment to be in error.

e) Upon the proper filing of a petition by a contesting party, the Property Tax Appeal Board shall have the power to revise all or any part of the assessment when it finds such assessment or part thereof to be in error.

f) The Property Tax Appeal Board is without jurisdiction to determine the tax rate, the amount of a tax bill, or the exemption of real property from taxation.

Section 1910.20 Correspondence

a) All communications to the illinois Property Tax Appeal Board shall be addressed to the Clerk of the Property Tax Appeal Board, 402 William G. Stratton Building, 401 5. Spring Street, Springfield, Illinois 62706-0002, unless otherwise directed. The main telephone number is (217)782-6076. The office of the Clerk of the Property Tax Appeal Board at Springfield, Illinois is the official location of the Board for the filing of papers for all counties other than Cook.

b) All communications to the Illinois Property Tax Appeal Board in Cook County shall be addressed to the Clerk of the Property Tax Appeal Board, 9511 West Harrison Street, Suite 171, Des Plaines, illinois 60016, unless otherwise directed. The main telephone number is (847)294-4360. The office of the Clerk of the Property Tax Appeal Board at Des Plaines, Illinois is the official location of the Board for the filing of papers for Cook County.

Section 1910.25 Computing Time Limits

The time within which any act under these rules is to be done shall be computed by exciuding the first day and including the last. Saturdays, Sundays and legal holidays for the State of Illinois shall be included in computing the time, except that when such time expires on a Saturday, Sunday or legal holiday for the State of Illinois, such period shall be extended to include the next following business day.

Section 1910.30 Petitions - Application

a) Petitions for appeal shall be filed within 30 days after the postmark date or personal service date of written notice of the decision of the board of review (see Section 12-50 of the Code). Petitions sent by mail shall be considered as filed on the date postmarked. Faxed petitions and evidence will not be accepted by the Board.

b) Petitions for appeal shall be filed within 30 days after the postmark date or personal service date of written notice of the application of final adopted township equalization factors by the board of review. Petitions sent by mail shall be considered as filed on the date post-marked. Faxed petitions and evidence will not be accepted by the Board.

c) The petition for appeal shall be on the prescribed form and a separate petition must be filed for each separately assessed parcel except for condominium buildings or unless a written request is made to the Board for the filing of a single petition for multiple parcels. Such request, together with the petition, shall be ified within 30 days after the postmark date or personal service of written notice of the decision of

the board of review. Each petition shall identify and describe the particular property induding the PIN or plate number, if any, assigned to the subject parcel by the county. In appeals where multiple parcels are consolidated into a single petition, the assessed values and the relief requested for each individual parcel must be separately listed.

d) Each copy of petitions filed with the Property Tax Appeal Board shallear an original signature of the contesting party or his attorney, and shall be filed with the Clerk of the Property Tax Appeal Board.

e) A copy of the written notice of the decision of the board of review shall be filed with the petition, if one has been issued.

f) Petitions for appeal shall be ified in triplicate and all copies of the same shall be properly signed as stated in subsection (d) of this Section. In every case where a change in assessed valuation of less than $100,000 is sought, all written and documentary evidence must be submitted in duplicate with the petition. In every case where a change in assessed valuation of $100,000 or more is sought, all written and documentary evidence must be submitted in triplicate with the petition. A photograph of the subject property should be submitted with the petition if it aids the contesting party in explaining the appeal.

g) If the contesting party is unable to submit written or documentary evidence with the petition, he must submit a letter requesting an extension of time with the petition. Upon receipt of such a request, the Board shall grant a 30 day extension of time. The Board shall grant additional or longer extensions for good cause shown. Good cause may indude but is not limited to the inability to submit evidence for a cause

beyond the control of the contesting party, such as the pendency of court action affecting the assessment of the property or the death or serious illness of a valuation witness. Without a written request for an extension, no evidence will be accepted after the petition is filed. Evidence sent by mail shall be considered as filed on the date postmarked.

h) Every petition for appeal shall state the facts upon which the contesting party bases his objection to the decision of the board of review, together with a statement of the contentions of law which he desires to raise. Each petition must also set forth the assessment for the subject property which the contesting party considers to be correct. If contentions of law are raised, the contesting party shall submit a brief in support of his position with the petition. Extensions of time shall be granted in accordance with subsection (g) of this Section. Failure to do so shall result in dismissal of the appeal.

i) Every petition for appeal shall give the post office address where mail addressed to the contesting party may be received by him or his attorney, together with his telephone number. The Property Tax Appeal Board must be notified in writing by any party of a change of address within 60 days of any such change.

j) The petition shall in all cases state the assessed value of the land, and the assessed value of the improvements (structures), and the total assessed value as placed on the property by the local assessor and by the board of review. The petition must also state the assessed valuation which the contesting party claims to be correct.

k) All information required to fully complete the petition shall be furnished by the contesting party at the time the petition is filed. Incomplete petitions and/or a letter shall be returned with an explanation of the reasons for the rejection. The contesting party must resubmit the corrected petition within 30 days after the date of the return of the petition. If the returned petition is not resubmitted within the 30 day period, the appeal will be dismissed from consideration by the Board. Petitions which are not signed, petitions which do not state the assessed valuation assigned by the local assessor and the board of review, petitions which do not state the assessed valuation considered correct by the contesting party, and petitions not containing all information as required herein, shall be treated as incomplete petitions. Written or documentary evidence will be accepted after receipt of a completed petition only when a letter requesting an extension of time was received and granted.

l) Upon receipt of a completed petition, induding the written and documentary evidence from the contesting party, the Clerk of the Property Tax Appeal Board shall send a copy of the petition to the board of review and to the State'sAttorney of the county in which the property is located. The Clerk shall cause the petition to become a part of such appeal proceedings and record.

m) If the petition for appeal is filed by an interested taxing body, rather than by the taxpayer whose assessment is in question, the taxing body must furnish the name and address of the owner of the property in question. A copy of such completed petition shall then be sent to the owner of the property. Any petition filed without the name and address

of the owner of the property in question shall be treated as an incomplete petition in accordance with subsection (k) of this Section.

Section 1910.40 Board of Review Response to Petition Application

a) Upon receipt of the completed petition from the contesting party, the Clerk of the Property Tax Appeal Board shall notify the board of review of the filing of the appeal. Upon notification of the filing of the appeal, the board of review shall submit its completed Board of Review Notes on Appeal disclosing the final assessment of the subject property The board of review Notes on Appeal shall also reflect the application of a local township multiplier where applicable. The board of review shall also submit a copy of the property record card of the subject property. The property record card should contain, where possible, a schematic drawing of all structural improvements to the land, a completed cost analysis, and an indication of the basis of the land value. The Board of Review Notes on Appeal and all written and documentary evidence supporting the board of review's position must be submitted to the Property Tax Appeal Board within 30 days after the date and/or postmark of the notice of the filing of an appeal unless the board of review objects to the jurisdiction of the Property Tax Appeal Board over the assessment appeal. In every case where a change in assessed valuation of less than $100,000 is sought, all written and documentary evidence must be submitted in duplicate. In every case where a change in assessed valuation of $100,000 or more is sought,

all written and documentary evidence must be submitted in triplicate.

b) If the board of review objects to the Board's jurisdiction, it must submit a written request for dismissal of the petition prior to the submission of the Board of Review Notes on Appeal and accompanying documentation. The request for dismissal must set forth the basis of the board of review's objections to the Property Tax Appeal Board's jurisdiction over the appeal. In such cases, the Property Tax Appeal Board shall transmit a copy of the request for dismissal to the contesting party and secure a written response to the request for dismissal from the contesting party within 30 days after the postmark date of the notice of the filing of the motion to dismiss. A copy of the response shall be transmitted to the board of review. Upon receipt of the request for dismissal and the response, the Property Tax Appeal Board shall issue a decision determining if it has jurisdiction in the matter.

c) If the board of review objects to the Board's jurisdiction and Property Tax Appeal Board subsequently determines that it has jurisdiction over the parties and the subject matter of the appeal, the board of review shall submit Board of Review Notes onAppeal, the subject's property record card and all written and documentary evidence within 30 days after the Board's decision determining jurisdiction.

d) If the board of review is unable to submit the additional written or documentary evidence with the Notes on Appeal, it must submit a letter requesting an extension of time with the Board of Review Notes on Appeal. Upon receipt of such a request, the Board shall grant a 30 day extension of time. The Board shall grant additional or longer extensions for good

cause shown. Good cause may be the inability to submit evidence for a cause beyond the control of the board of review, such as, but not limited to, the pendency of court action affecting the assessment of the property or the death or serious illness of a valuation witness. Without a written request for an extension, no evidence will be accepted after the Board of Review Notes on Appeal is filed.

e) The Clerk shall cause such assessment record to become a part of such appeal proceeding and record, and shall send a copy of the same to the contesting party or his attorney.

f) Pursuant to Section 16-180 of the Property Tax Code, in every case for appeal where a change in assessed valuation of $100,000 or more is sought, the board of review shall serve a copy of the petition filed with the Property Tax Appeal Board upon receipt of the same on all taxing districts as shown on the last available tax bill. The board of review shall also serve a certificate of service on the Property Tax Appeal Board affirming that all taxing districts have received notification of the appeal. The certificate of service shall be signed by a member of the board of review or the clerk of the board of review.

Section 1910.50 Determination of Appealed Assessment

a) All proceedings before the Property Tax Appeal Board shall be considered de novo which shall mean that the Property Tax Appeal Board will consider only the evidence, exhibits and briefs submitted to it, and will not give any weight or consideration to any prior actions by a local board of review or any submissions not timely filed or not specifically made a part of the record. (Section 16-180 of the Code)

b) By statute, the Property Tax Appeal Board may accept into the record all evidence, exhibits and briefs submitted by all interested parties and render a decision without holding a hearing. On its own motion, the Board may order a hearing to be held at a time and place designated by the Board. A hearing shall be granted if any party to the appeal submits a request in writing. (Section 16-170 of the Code)

c) The decisions of the Property Tax Appeal Board will be based on equity and the weight of the evidence.

1) In all counties other than Cook, a three-year county wide assessment level to be based on relevant sales during the previous three years as certified by the Department of Revenue will be considered where sufficient probative evidence is presented indicating the estimate of full market value of the subject property on the relevant real property assessment date of January 1.

2) In Cook County, for residential property of six units or less currently designated as Class 2 real estate according to the Cook County Real Property Assessment Classffication Ordinance, as amended, where sufficient probative evidence indicating the estimate of full market value of the subject property on the relevant assessment date is presented, the Board may consider evidence of the appropriate level of assessment for property in that class. Such evidence may include:

A) the Department of Revenue's annual sales ratio studies for Class 2 property for the previous three years; and

B) competent assessment level evidence, if any, submitted by the parties pursuant to this Part.

3) In Cook County, for all other classes of property, where sufficient probative evidence indicating the estimate of full market value of the subject property on the relevant assessment date is presented, the Board may consider competent evidence admitted pursuant to this Part, if any, which is relevant to the level of assessment applicable to the subject property under the Illinois Constitution, the Illinois Property Tax Code, and the Cook County Real Property Assessment Classification Ordinance, as amended.

d) Whether a hearing is held in the appeal proceeding, the proceeding before the Property Tax Appeal Board shall be terminated when the Board renders a decision. The Board may revise and/or correct a decision upon its own initiative at any time prior to the expiration of the Administrative Review filing period as provided in Section 16-195 of the Property Tax Code if a mistake in the calculation of an assessment or other clerical error is discovered. In such event, the Board shall issue an amended decision. The decision or order of the Property Tax Appeal Board in any such appeal shall, within 10 days after it is made and entered, be certified to every party to the proceeding and to the proper authorities, induding the board of review whose decision was appealed, the County Clerk who extends taxes upon the assessment in question, and the County Collector (Treasurer) who collects property taxes upon such assessment.

e) A majority of the Members of the Board is required to make a decision of the Board.

f) Final administrative decisions of the Property Tax Appeal Board are subject to review under the provisions of the Administrative Review Law [735 ILCS 5/Art. mi and Section 16-195 of the Property Tax Code [35 ILCS 200/16-195].

g) The required number of copies of all documents in an appeal file necessary to complete the certification of the Property Tax Appeal Board proceedings in answer to a complaint for Administrative Review will be prepared by the Property Tax Appeal Board at a cost to the plaintiff of $.25 per page, except for pages of the original transcript which will have a cost of $.75 per page, and for pages larger than legal size which will have a cost of $1.00 per page. (Section 16-195 of the Code) From the original certification of proceedings, which will be ified with the Clerk of the Circuit Court, copies of the proceedings will be prepared and forwarded to the Attorney General, State's Attorney, and the plaintiff in the Administrative Review and one copy will be retained as a permanent record for the Property Tax Appeal Board. An estimate of the cost of preparing a certified record will be mailed to the plaintiff. Upon receipt of the necessary payment, the Property Tax Appeal Board will prepare certification of the proceedings.

h) If a petition is filed by a taxpayer with the Property Tax Appeal Board, the taxpayer is preduded from filing objections based upon valuation in the Circuit Court as may otherwise be permitted by Sections 21-175 and 23-5 of the Property Tax Code. (Section 16-160 of the Code)

i) If a taxpayer files objections based upon valuation in the Circuit Court as permitted by Sections 21-175 and 23-5 of the Property Tax Code, the taxpayer is precluded from filing a petition contesting the assessment of the subject property with the Property Tax Appeal Board. (Section 16-160 of the Code)

j) If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the board of review or after adjournment of the session of the board of review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of the written notice of the Property Tax Appeal Board decision, appeal the assessment for such subsequent year directly to the Property Tax Appeal Board. (Section 16-185 of the Code)

k) If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225 of the Code, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review. (Section 16-185 of the Code)

1) If a stipulation is agreed to by all interested parties, it may be taken into consideration by the Property Tax Appeal Board but must be supported by evidence

in the record. The Board reserves the right to write a decision based on the facts, evidence and exhibits in the record.

m) The contesting party may, at any time before the hearing begins, upon notice to the parties to the appeal, move to dismiss the appeal, by written request ified with the Board. However, where a party to the appeal has filed substantive evidence in response to the contesting party's petition, a dismissal will only be granted if no objections are made by any party to the appeal.

Section 1910.60 Interested Parties - Intervention

a) Any taxpayer or owner of property dissatisfied with a decision of the board of review as such decision pertains to the assessment of his property may become a party to the appeal by filing a petition with the Property Tax Appeal Board within 30 days after the postmark date or personal service date of written notice of the decision of the board of review or the postmark date or personal service date of the written notice of the application of final, adopted township multipliers by the board of review. If the taxpayer or owner of property files a petition within 30 days of the postmark date or personal service date of the written notice of the application of final, adopted township multipliers, the relief the Property Tax Appeal Board may grant is limited to the amount of the increase caused by the application of the township multiplier.

b) Any taxing body that has a revenue interest in a decision of the board of review may become a party to an appeal by filing its petition within 30 days after

the postmark date of the written notice to the taxpayer of a decision by the board of review. Any taxing district so filing must conform its petition and documentation to the provisions of Section 1910.30.

c) Upon notice to the owner that a taxing body has filed an appeal affecting his property, the owner or taxpayer may become an intervening party by filing in triplicate with the Clerk of the Property Tax Appeal Board a Request to Intervene within 30 days after the postmark date of the notice to the owner or taxpayer that the taxing body has filed an appeal.

d) Any taxing body that has a revenue interest in an appeal before the Property Tax Appeal Board may become an intervening party by filing in triplicate with the Clerk of the Property Tax Appeal Board a Request to Intervene. The Request to Intervene must be filed within 60 days after the postmark date of the notice of the Board to the State's Attorney of the filing of an appeal, or within 30 days after the postmark of the board of review service as required in Section 16-180 of the Property Tax Code. The Request to Intervene must be accompanied by a copy of the resolution of the governing board of the taxing body authorizing its legal representative to file a Request to Intervene on its behalf.

e) Requests to Intervene shall be ified in triplicate and all copies of the same shall be signed. All additional written and documentary evidence must be submitted with the Request to Intervene in triplicate. Any Request to Intervene which is received without a copy of the resolution of the governing board of the taxing body authorizing its legal representative to ifie the Request to Intervene on its behalf shall be treated as incomplete and shall be returned. However, the

intervening party may refile within 20 days after the date of the return of the Request to Intervene.

f) If the intervening party is unable to submit the additional written or documentary evidence with the Request to Intervene, he must submit a letter requesting an extension of time with the Request to Intervene. Upon receipt of such a request, the Board shall grant a 30 day extension of time. The Board shall grant additional or longer extensions for good cause shown. Good cause may include but not limited to the inability to submit evidence for a cause beyond the control of the contesting party, such as the pendency of court action affecting the assessment of the property or the death or serious illness of a valuation witness. Without a written request for an extension, no evidence will be accepted after the Request to Intervene is filed.

g) The Clerk of the Property Tax Appeal Board shall cause such Request to Intervene and all accompanying documentation to become a part of the appeal proceeding and record, and shall send a copy of the same to the contesting party and the board of review. Upon receipt of a timely Request to Intervene, the Clerk of the Property Tax Appeal Board shall cause a copy of the appeal record to be forwarded to the intervening party.

Section 1910.63 Burdens of Proof

a) Under the principles of a de novo proceeding, the Property Tax Appeal Board shall not presume the action of the Board of Review or the assessment of any local assessing officer to be correct. However, any contesting party shall have the burden of going forward.

b) Under the burden of going forward, the contesting party must provide substantive, documentary evidence or legal argument challenging the correctness of the assessment of the subject property. Failure to do so will result in the dismissal of the appeal.

c) Once a contesting party has provided evidence or argument sufficient to challenge the correctness of the assessment of the subject property, the Board of Review shall be required to go forward with the appeal. The Board of Review must provide substantive, documentary evidence or legal argument sufficient to support its assessment of the subject property or some other, alternate valuation. Failure to do so will result in a decision by the Property Tax Appeal Board based upon the information submitted by the contesting party and, if applicable, the evidence submitted by any intervening party.

d) Any intervening party shall be required to support the position he propounds with substantive, documentary evidence or legal argument as provided in this Part.

e) When market value is the basis of the appeal, the value of the subject property must be proved by a preponderance of the evidence. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence.

Section 1910.65 Documentary Evidence

a) The Property Tax Appeal Board generally considers appeals with respect to the correct valuation of property for assessment purposes based upon the following contentions:

1) the subject property is not accurately assessed when its assessment is compared to the assessments of other, similar properties in its neighborhood; and/or

2) the market value of the subject property is not accurately reflected in its assessment.

b) Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of the subject property and it is recommended that not less than three comparable properties be submitted. Documentation must be submitted showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property.

c) Proof of the market value of the subject property may consist of the following:

1) an appraisal of the subject property as of the assessment date at issue;

2) a recent sale of the subject property;

3) documentation evidencing the cost of construction of the subject property including the cost of the land and the value of any labor provided by the owner if the date of construction is proximate to the assessment date; or

4) documentation of not fewer than three recent sales of suggested comparable properties together with documentation of the similarity, proximity and lack of distinguishing characteristics of the sales comparables to the subject property.

d) The Property Tax Appeal Board may consider appeals based upon contentions of law. Such contentions of law must be concerned with the correct assessment of the subject property. If contentions of law are raised, the party shall submit a brief in support of his position.

Section 1910.66 Rebuttal Evidence

a) Upon receipt of the argument and accompanying documentation filed by a party, any other party may, within 30 days after the postmark date of the Board's notice, file written or documentary rebuttal evidence. Rebuttal evidence shall consist of written or documentary evidence submitted to explain, repel, counteract or disprove facts given in evidence by an adverse party and must tend to explain or contradict or disprove evidence offered by an adverse party.

b) Rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. A party to the appeal shall be preduded from submitting its own case in chief in the guise of rebuttal evidence.

Section 1910.67 Hearings

a) By statute, the Property Tax Appeal Board may render a decision based upon the evidence, exhibits and briefs submitted to it by all interested parties without holding a hearing.

b) The Property Tax Appeal Board shall review all appeals filed in compliance with these rules to determine whether a hearing shall be held on any factual or legal issue. Whenever the Board deter-

mines that a hearing is not required, the appeal shall be decided based upon the evidence in the record. The Board shall hold a hearing at the request of any party in writing. In the event a hearing is deemed necessary the Board shall give notice to all parties to the appeal of the time, date, and place of the hearing at least 20 days prior to the hearing, unless the 20 day period is specifically waived by all the parties to the appeal.

c) A party may request a decision of the Property Tax Appeal Board based upon the evidence in the record by filing a written request with the Board. Any such request shall not be binding on the Board.

d) Notice of a hearing to all interested taxing bodies by the Property Tax Appeal Board shall be deemed to have been given when served upon the State's Attorney of the county from which the appeal has been taken, unless such interested taxing bodies have specifically been made parties to the appeal proceeding.

e) In all cases where a change in assessed valuation of $300,000 or more is sought, the Property Tax Appeal Board shall order a prehearing conference on the motion of any party to the appeal. In all appeals the Board may set a prehearing conference to promote the narrowing of issues, stipulations, and judicial economy. The Board's determination will be based on the complexity of the appeal, the issues in controversy, and the potential for settlement. This hearing will be designed to ascertain the positions of the parties and to reach agreements on stipulations of fact, admission of documents and all other matters that will expedite the hearing and determination of the appeal whenever the cases have been set for hearing by the Board and one or more factual or legal

issues exist which can be resolved at a prehearing conference. The Board shall issue a prehearing order resolving matters agreed to and rulings as to disputed matters. The order shall be served at the same time upon all parties and shall control the subsequent course of the proceeding.

f) Hearings may be held before less than a majority of the Members of the Board, and the Chairman may assign Members or Hearing Officers to hold hearings. Any hearing may be conducted by the Property Tax Appeal Board at its offices in Springfield or Des Plaines or at any other location in illinois selected by the Board. The Board may cause its Hearing Officer to conduct such hearing and report his findings for affirmation or rejection by the Board.

g) Hearings shall be open to the public and shall be conducted in accordance with such rules of practice and procedure as the Board may make and promulgate.

h) Every Hearing Officer presiding over a Property Tax Appeal Board hearing must meet the following requirements:

1) possess a working knowledge of the English language, including composition and grammar;

2) possess a working knowledge of standard office practices and procedures;

3) possess an ability to effectively communicate technical information both orally and in writing;

4) possess an ability to deal tactfully with the general public, attorneys, and service providers;

5) possess an ability to prepare concise and factual reports on hearing findings for presentation to the Board;

6) possess an ability to conduct hearings and obtain and analyze necessary information;

7) possess a valid Illinois driver's license;

8) be of high integrity and of good personal repute;

9) be familiar with this Part and the Property Tax Code;

10) be disinterested and impartial; and

11) have no financial or personal interest in the result of the hearing.

i) Authority of the Board and designated Hearing Officers.

1) In connection with any proceeding, the Board, or any of its designated Hearing Officers, shall have full authority over the conduct of a hearing and the responsibility for submission of the matter to the Board for decision. The Board or its designated Hearing Officer shall have those duties and powers necessary to these ends, including:

A) To conduct hearings and pre-hearing conferences;

B) To admit or exclude testimony or other evidence into the record pursuant to this Part;

C) To administer oaths and affirmations and examine all per sons appearing at the hearing to testify or to offer evidence;

D) To require the production of any book, record, paper or document at any stage of the appeal or of the hearing which is the foundation for any evidence or testimony presented in the appeal;

E) To require the submission of briefs on issues of law raised during the hearing within 60 days after the termination of the hearing;

F) To call upon any person at any stage of the hearing to produce witnesses or information that is material and relevant to any issue; and

G) To ensure that the hearing is conducted in a full, fair and impartial manner, that order is maintained, and that unnecessary delay is avoided in the disposition of the hearing.

2) Any Hearing Officer assigned to conduct a hearing on behalf of the Board shall be empowered to exercise the full authority of the Board with respect to the conduct and control of the proceeding.

j) Continuances shall be granted for good cause shown in writing, and then only on an order of a Member of the Property Tax Appeal Board, or a duly authorized Hearing Officer. Good cause shall be the inability to attend the hearing at the date and time set by the Board for a cause beyond the control of the party, such as the unavoidable absence of a party, his attorney or material witness, or the serious illness or death of a witness or party. The Board shall set the hearing of a continued case at the time it sets other

hearings of appeals from the county in which the subject of the continued appeal lies, unless the parties request that the Board decide the appeal based upon the evidence in the record without a formal hearing.

k) At the hearing, the contesting party shall first introduce his case into evidence, followed by the evidence of other parties to the appeal, in the order directed by the Property Tax Appeal Board or Hearing Officer. All parties are entitled to a rebuttal after all evidence of all parties has been introduced. Evidence submitted to the Board in documentary form may be made a part of the record without the document being read into the record if the Board or Hearing Officer so orders.

l) In no case shall any written or documentary evidence be accepted into the appeal record at the hearing unless:

    1) Such evidence has been submitted to the Property Tax Appeal Board prior to the hearing pursuant to this Part;

    2) The filing requirement is specifically waived by the Board; or

    3) The submission of the written or documentary evidence is specifically ordered by the Board or by a Hearing Officer.

m) Appraisal testimony offered to prove the valuation asserted by any party shall not be accepted at the hearing unless a documented appraisal has been timely submitted by that party pursuant to this Part. Appraisal testimony offered to prove the valuation asserted may only be given by a preparer of the

documented appraisal whose signature ppears thereon.

n) All testimony taken at the hearing shall be under oath or affirmation. The Board shall eliminate such rules of evidence, practice and procedure to the extent it considers practicable.

o) In all cases where the contesting party is seeking a change of $100,000 or more in assessed valuation, the contesting party must provide a court reporter at his own expense. The original certified transcript of such hearing shall be forwarded to the Property Tax Appeal Board and shall become part of the Board's official record of the proceedings on appeal. The court reporter's certified transcript should be forwarded as soon as possible but no later than within 60 days after the hearing.

Section 1910.68 Subpoenas

a) Issuance. Subpoenas shall be issued by the Chairman of the Board or his designee for good cause shown to compel the attendance of a witness or the production of books, records, correspondence, documents, papers or other evidence to facilitate its determination of the correct assessment of any parcel of real property. Good cause shall exist when the documentation which is the subject of the subpoena is in the exclusive possession and control of another party to the appeal and is necessary to a full determination of the issues presented in the appeal before the Board, or when the attendance of a witness who is the subject of a subpoena is necessary to a full determination of the issues presented in the appeal before the Board.

b) Service. Subpoenas shall be served by any person lawfully authorized to serve a subpoena under the laws of this State. Section 2-1101 of the Code of Civil Procedure [735 ILCS 5/2-1101]. The party requesting the subpoena shall be responsible for its service.

c) Witnesses attending any proceeding held by the Property Tax Appeal Board pursuant to any subpoena, shall be paid the same fees and mileage that are paid witnesses in the circuit courts of this State. (Section 16-175 of the Code) The cost of service and witness and mileage fees shall be paid by the party requesting the subpoena.

d) In case of disobedience to a subpoena, the Board may petition any circuit court of the State for an order requiring enforcement of the subpoena.

Section 1910.69 Sanctions

a) Failure of any party to comply fully with all rules and/or specific requests of the Property Tax Appeal Board as provided in Sections 1910.30,1910.40,1910.60,1910.65 and 1910.67 of this Part shall result in the default of that party.

b) When a hearing is ordered by the Property Tax Appeal Board, all parties shall appear for the hearing on the appeal on the date and at the hour set by the Property Tax Appeal Board. Failure to appear on the date and at the hour set by the Property Tax Appeal Board shall be sufficient cause to default that party.

c) When a party, his attorney, or his witness engages in threatening, disruptive, vulgar, abusive or obscene conduct or language which delays or protracts a proceeding, the Board, by any Member, or Hearing

Officer, shall exclude the offending person from the proceeding. Any party engaging in such conduct or language shall be defaulted.

d) Failure of the contesting party to furnish a court reporter as required in Section 1910.67(o) of this Part shall be sufficient cause to dismiss the appeal. Failure of the contesting party to furnish a court reporter's transcript within 60 days after the date of the hearing shall result in the dismissal of the appeal.

e) Failure of the contesting party to pursue disposition of an appeal in a reasonable time will render the appeal subject to dismissal. In making this determination, the Board shall consider factors including, but not limited to, the history of the appeal, the length of time that has elapsed since the last action taken in the appeal, past attempts to schedule the appeal for hearing, and the contesting party's compliance with any Board or hearing officer requests or orders.

Section 1910.70 Representation at Hearings

a) A party shall have the right to represent himself and to be present at and participate in any hearing before the Property Tax Appeal Board. The right to participate shall include the rights to call, examine and cross-examine witnesses and to discuss any evidence properly submitted pursuant to this Part. A party may be represented at the hearing by any person who is admitted to practice as an attorney in this State. Accountants, tax representatives, tax advisers, real estate appraisers, real estate consultants and others not qualified to practice law in this State may not appear at hearings before the Board in a representa-

tive capacity, and may not conduct questioning, cross-examination or other investigation at the hearing. However, such persons may testify at hearings before the Board and may assist parties and attorneys in preparation of cases for presentation by such parties and attorneys for the Board at hearings.

b) Any party, induding a corporation, may be represented at a Property Tax Appeal Board proceeding by any authorized officer, employee or attorney

Section 1910.71 Ex Parte Communications

a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis, the Board members and Board employees shall not, with respect to any contested appeal pending, communicate directly or indirectly, in connection with any issue of fact, with any person, party or the representative of any party except upon notice and an opportunity for all parties to participate.

b) An ex parte communication received by any Board member or Board employee shall be made a part of the record of the pending appeal, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.

c) Communications regarding matters of practice and procedure, such as the status of appeals, filing requirements, form letters, scheduling of hearings, administrative review, and the like, are not considered ex parte communications under this Section

Section 1910.75 Access to Board Records—Freedom of Information Procedures

a) Board Policy

This Section is established to implement the provisions of the Freedom of Information Act [5 ILCS 140]. The purpose of this Section is to support the policy of providing public access to public records in the possession of the Property Tax Appeal Board while, at the same time, protecting legitimate privacy interests and maintaining administrative efficiency.

b) Definitions.

1) FOJA - the Freedom of Information Act.

2) reedom of Information Officer - the individual responsible for receiving and responding to requests for public records.

3) Requester—a person who submits a request for public records in accordance with this Section.

4) Working days - calendar days other than Saturdays and Sundays and legal State holidays.

c) Person to whom requests are submitted.

Requests for public records shall be submitted to the Freedom of Information Officer of the Board. Requests shall be submitted to the following address:

Freedom of Information Officer

Illinois Property Tax Appeal Board

402 Stratton Building

401 South Spring Street

Springfield, IL 62706

ATIN: FOLA Request

d) Form and contents of requests.

1) Requests in accordance with the FOIA and this Section shall be in writing. Such requests shall be submitted on FOJA request forms provided by the Board.

2) Oral requests are not preduded by the FOTA; neither are they governed by it.

3) The requester shall provide the following information in a request for public records:

A) The requester's full name, address, and telephone number;

B) A brief description of the public records sought, being as specific as possible; and

C) Whether the request is for inspection of public records, copies of public records, or both.

e) Inspection of records at the Board's offices.

1) Generally, public records will be available for inspection at the Board's offices in Springfield or Des Plaines between the hoursof 8:30 AM and 5:00 PM Monday through Friday, except on State holidays. Space will be provided for the requester to inspect public records.

2) An employee of the Board may be present throughout the inspection.

3) A requester shall not be permitted to take briefcases, bags, folders or other similar materials, or pens, into the inspection area.

4) A requester will be permitted to take pencils and paper into the inspection area.

5) Documents which the requester wishes to have copied shall be segregated during the course of inspection. Generally, all copying will be done by Board employees.

f) Copies of public records.

1) Copies of public records shall be provided to the requester only upon payment of any charges that are due.

2) Fees for copies of public records shall be assessed in accordance with Section 6(a) of the FOIA. A schedule of fees will be available in each of the Board's offices as required by Section 4 of the FOIA. Fees may be reduced or waived if the requester satisfies the criteria set forth in Section 6(b) of the FOIA.

3) Fees shall be waived if the requester is a State agency, a constitutional officer, or member of the General Assembly.

4) Payment shall be made by check or money order payable to the flhlnois Property Tax Appeal Board and sent to the Freedom of Information Officer.

5) If the requester is unwilling or unable to pick up the copies of requested records at the Board's offices, the requester shall bear mailing or shipping costs.

g) Time for response.

1) The Freedom of Information Officer shall respond to a written request for public re-

cords within 7 working days after receipt of such request.

2) In the event the request for public records cannot be responded to within 7 days for one of the reasons provided in Section 3(d) of the FOIA, the Board shall have an additional 7 working days in which to respond. The Board shall give the requester notice of the extension of time to respond. Such notice of extension shall set forth the reasons why the extension is necessary

h) Types of Board responses.

1) The Freedom of Information Officer shall respond to a request for public records in one of three ways:

A) approve the request;

B) approve in part and deny in part; or

C) deny the request.

2) Upon approval of a request for public records, the Freedom of Information Officer may either provide the materials immediately, give notice that the materials shailbe made available upon payment of reproduction costs, or give notice of the time and place for inspection of records.

3) A denial of a request for public records shall be made in writing. It shall state the reasons for the denial in accordance with either Section 3(f) or Section 7 of the FOIA and the names and titles of individuals responsible for the decision. It shall also give notice of the requester's right to appeal to the Chairman of the Board.

4) Categorical requests creating an undue burden upon the Board shall be denied only after extending to the requester an opportunity to confer in an attempt to reduce the request to manageable proportions in accordance with Section 3(f) of the FOJA.

5) Failure to respond to a written request within 7 working days may be considered by the requester a denial of the request.

I) Appeal of a denial.

1) A requester whose request for public records has been denied by the Freedom of Information Officer may appeal the denial to the Chairman of the Board. The Notice of Appeal shall be in writing and shall be addressed to the Board's Springfield office, attention: Chairman (FOLA Appeal).

2) The Notice of Appeal shall include a copy of the original request and a written statement setting forth the reasons why the requester believes the appeal should be granted.

j) Chairman's response to denial.

The Chairman shall respond to an appeal within 7 working days after receiving a Notice of Appeal. The Chairman shall either affirm the denial or provide access to the requested public records. Failure to respond within 7 working days may be considered by the requester as an affirmation of the denial.

Section 1910.76 Publication of Annual Synopsis

The Property TaxAppeal Board shall publish annually a volume containing synopses of representative cases

decided by the Board during that year. The publication shall be organized by or cross-referenced by the issue presented before the Board in each decision contained in the publication. Copies shall be made available to the public at no charge.

Section 1910.80 Forms

All forms issued pursuant to this Part will be available at the offices of the Property Tax Appeal Board and at the county boards of review and supervisor of assessments or county assessor's offices. Only the prescribed forms of the Property Tax Appeal Board may be used.

Section 1910.90 Practice Rules

a) The provisions of this Section are promulgated pursuant to Section 16-180 of the Code and shall apply to all hearings conducted by the Property Tax Appeal Board. Nothing contained in this Section shall in any way negate, limit, modify or otherwise affect any of the powers, duties or authority of the Board under the Act.

b) Appeals filed with the Property Tax Appeal Board shall be set for hearing pursuant to Section 1910.67 of this Part. All hearings once commenced shall continue on successive work days until completed unless any Member or designated Hearing Officer orders a continuance of the hearing pursuant to subsection (d) of this Section. All hearings shall be open to the public.

c) The sequence to be followed for all hearings before the Property Tax Appeal Board shall be as follows:

1) Preliminary matters—motions or objections, or attempts to narrow issues or limit evidence shall be heard first;

2) Opening statements—the contesting party shall proceed first, followed by the Board of Review and Intervenors, if any; opening statements may be waived or may be reserved and presented prior to the commencement of a party's case in chief;

3) Case in chief—the evidence and witnesses presented to prove the position of the contesting party shall be heard first, followed by those of the Board of Review and Intervenors, if any; as witnesses complete their testimony, they are subject to cross-examination by the Hearing Officer and the other parties to the appeal; witnesses may be questioned under redirect examination where necessary;

4) Rebuttal—the evidence and witnesses presented to rebut the evidence offered in opposition to the contesting party's position shall be heard after the completion of the cases in chief of all parties, followed by the rebuttal evidence and witnesses of the Board of Review and Intervenors, if any;

5) Closing statements - the dosing argument of the contesting party shall be heard first, followed by the closing arguments of the Board of Review and Intervenors, if any; the contesting party shall be permitted a brief rebuttal at the end of the closing arguments of the other parties.

d) Continuances of appeals set for hearing shall be granted pursuant to Section 1910.67(j) of this Part; a hearing which has commenced may be continued by order of the Hearing Officer to permit further testimony or argument only if the time allotted for the hearing has expired.

e) All witnesses appearing before the Property Tax Appeal Board shall testify under oath or affirmation.

f) Any party may object to the admissibility of evidence or testimony, and such objections must dearly state the specific ground or rule of law which is the basis for the objection.

1) When an objection is made to the admissibility of evidence prior to the hearing of the appeal, the objection must be made in writing. A copy of the objection shall be transmitted to all other parties to the appeal, and the Property Tax Appeal Board shall solicit responses thereto from all other parties. The Board shall issue its ruling on such objection in writing prior to the hearing of the appeal.

2) When an objection is made to the admissibility of evidence or testimony during the hearing, the Hearing Officer may either sustain or overrule the objection if it is based on the provisions of this Part, or may reserve the ruling and permit the testimony and/or evidence into the record subject to the ruling of the Property Tax Appeal Board on the objection in its decision for the appeal.

3) Any party offering evidence which is ruled inadmissible shall be permitted to make a brief offer of proof in writing upon motion made at the hearing.

g) The Property Tax Appeal Board or its designated Hearing Officer may exclude inadmissible evidence upon its own motion.

h) Writings, documents and all copies thereof submitted to the Property Tax Appeal Board shall be legible, and exhibits shall be plainly marked and identified. All exhibits and documentation discussed during the hearing shall be marked for identification by the Hearing Officer.

i) The Property Tax Appeal Board may take official notice of decisions it has rendered, matters within its specialized knowledge and expertise, and all matters of which the Circuit Courts of this State may take judicial notice.

j) Any party or his witness maybe called by any other party as an adverse witness and examined as if under cross-examination in the same manner and under the same circumstances as provided in Section 2-1102 of the Code of Civil Procedure [735 ILCS 5/2-1102]. Upon a showing that a witness was called in good faith and that the party calling him is surprised by his testimony, examination of the witness may proceed as if under cross-examination, and the testimony of the witness may be impeached by prior statements or otherwise.

k) The Hearing Officer presiding over or scheduled to preside over a Property Tax Appeal Board hearing may be disqualified from the hearing as follows:

    1) Any interested party may move for the disqualification of a Hearing Officer based on bias or a conflict of interest. The motion must be in writing and must stat? specific fads establishing that bias or a conflict of interest

exists. Adverse rulings in pending or prior appeals shall not be sufficient to establishbias or a conflict of interest.

2) A motion for disqualification shall be made promptly after the moving party learns the identity of the Hearing Officer or after learning fads that establish grounds for disqualification. The motion shall be presented to the Chairman of the Board or the Executive Director. If bias or a conffict of interest is found to exist, another Hearing Officer shall be appointed as soon as possible.

3) The Hearing Officer may at any time voluntarily disqualify himself or herself.

l) It is the policy of the Property Tax Appeal Board that the parties to an appeal should to the fullest extent possible stipulate all matters which are not or fairly should not be in dispute. Prior to the hearing, during a prehearing conference or during the hearing of any appeal, the parties may ifie a stipulation setting forth all pertinent fads that are not in dispute, a list of all exhibits to which there are no objections, and any other matters that are not in dispute.

m) Decisions of the Property Tax Appeal Board shall dispose of contested matters upon the merits and shall set forth the Board's findings of fact and conclusions of law, and shall be served by mail on the persons and parties affected thereby as provided in Section 16-185 of the Property Tax Code. Decisions of the Board shall be based on the evidence contained in the administrative record.

Section 1910.95 Separability

In the event any provision or term of this Part, or any amendment thereto, is determined by a court or other authority of competent jurisdiction to be invalid, such determination shall not affect the remaining provisions which shall continue in full force and effect.

PROPERTY TAX APPEAL BOARD

35 ILCS 200/Art. 7 and 35 ILCS 200/16-180

Issued November, 1998

CONTENTS PRINTED ON RECYCLED WIPER

BY AUTHORITY OF THE STATE OF ILLINOIS

PTAB-13 (A-10/98)

1997 REAL ESTATE ASSESSED VALUATION COMPLAINT THE BOARD OF APPEALS OF COOK COUNTY TYPE OR PRINT ALL INFORMATION. COMPLY WITH BOARD RULES AND REGULATIONS IN FILLING OUT THIS FORM.

Name of Appellant The Lurie Company

Address of Appellant

120 S. LaSalle Street

Chicago IL 60603

Phone No. 263-2300

STATUS OF APPELLANT

Owner x

Former Owner Liable for Tax

Tenant Liable for Tax

Beneficiary of Trust

Executor

Other (Explain)

LOCATION AND IDENTIFICATION OF REAL ESTATE

Address 221 N. LaSalle Street City Chicago Township: South

Description of Property:

Single Family

6 Apts. or Less

Over 6 Apts. Other

Commercial xxx

Industrial

Not-For-Profit

Mixed Use

Vacant Land

Condo

If purchased on or after January 1,1994. Year Purchased PRIOR Purchase Price $_____

If purchased prior to January 1, 1994, insert "prior".

The undersigned Appellant states that the above described real estate is OVERASSESSED by the Assessor of Cook County for the year 1997.

Was an Appeal made to the Assessor for 1997? x Yes

Was an Appeal made to the Board of Appeals for 1996? x Yes

The undersigned states that he has read the above complaint, has personal knowledge of the contents thereof, and the same Is true in substance and in fact.

/s/_____

of Attorney

ATTORNEY'S CERTIFICATION: I.Leonard W. Golan, Leonard W. Golan Ltd., 3 First National Plaza 15th Flr. Chgo. 60602 263-2300 certify that I have obtained from H. Michael Kurzman Executive Vice President (1) explicit authorization to file this 1997 assessment complaint and (2) the Appellant's assurance that I am the only attorney so authorized.

/s/_____ 8306

Signature of Attorney Board Appeals Code No.

NOTICE TO APPELLANT. You will be notified by mail of the time and place of your hearing. You must be prepared at that time to present any evidence you have In support of your claim. Please see the 1997 Rules of the Board of Appeals which govern all appeals

WILSON FROST—JOSEPH BERRIOS

COMMISSIONERS

*BA Form RE. No. 1

COMPLAINT NO.

Received & Checked by:

List in ascending order all Permanent Index Numbers of related parcels of the property owned by Appellant.

PERMANENT INDEX NUMBER VOLUME

1.17-09-419-001 510

2._____

3._____

4._____

5._____

6._____

7._____

8._____

9._____

10._____

11._____

12._____

13._____

14._____

15._____

16._____

17._____

18._____

19._____

20._____

21._____

22._____

23._____

24._____

25._____

DO NOT LIST COMPARABLES ABOVE

1998 REAL ESTATE ASSESSED VALUATION

COMPLAINT THE BOARD OF APPEALS/BOARD OF REVIEW OF COOK COUNTY

TYPE OR PRINT ALL INFORMATION. COMPLY WITH BOARD RULES AND REGULATIONS IN FILLING

OUT THIS FORM.

Name of Appellant THE LURIE COMPANY

Address of Appellant

120 SOUTH LASALLE STREET

CHICAGO, ILLINOIS 60603

Phone No.312-984-1700

STATUS OF APPELLANT

XOwner

X Former Owner Liable for Tax

Tenant Liable for Tax

X Beneficiary of Trust

Executor

Other (Explain)

LOCATION AND IDENTIFICATION OF REAL ESTATE

Address 221 NORTH LASALLLE STREET City CHICAGO Township SOUTH

Description of Property:

Single Family

6 Apts. or Less

Over 6 Apts. Other

X Commercial

X Industrial Not-For-Profit

Mixed Use

Vacant Land

Condo

If purchased on or after January 1, 1995. Year Purchased Purchase Price $

If purchased prior to January 1, 1995, insert "prior".

The undersigned Appellant states that the above described real estate is OVERASSESSED by the Assessor of Cook County for the year 1998.

Was an Appeal made to the Assessor for 1998? Was an Appeal made to the Board of Appeals for 1997? x Yes

The undersigned states that he has read the above complaint, has personal knowledge of the contents thereof, and the same is true in substance and in fact.

ATTORNEY'S CERTIFICATION: I.Leonard W. Golan, Leonard W. Golan Ltd., 3 First National Plaza 15th Flr. Chgo. 60602 263-2300 certify that I have obtained from H. Michael Kurzman Executive Vice President (1) explicit authorization to file this 1997 assessment complaint and (2) the Appellant's assurance that I am the only attorney so authorized.

/s/ 8306

Signature of Attorney Board Appeals Code No.

NOTICE TO APPELLANT. You will be notified by mail of the time and place of your hearing. You must be prepared at that time to present any evidence you have

In support of your claim. Please see the 1997 Rules of the Board of Appeals which govern all appeals.

*B.A/BR Form RE. No. 1

BOARD APPEALS/REVIEW. ORIGINAL

COMPLAINT NO.

Received & Checked by:

List in ascending order all Permanent Index Numbers of related parcels of the property owned by Appellant.

PERMANENT INDEX NUMBER	VOLUME
1.17-09-419-001-0000	510

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

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18. _____

19. _____

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21. _____

22._____

23._____

24. _____

25._____

DO NOT LIST COMPARABLES ABOVE

Cook County Board of Review
Annual Report
2002 Assessment Year

Maureen Murphy
Commissioner

118 North Clark, Room 4601
Chicago, Illinois 60602-1311
Phone: 312-603-3644

Published September 2003
Not Printed at Taxpayer Expense

Board of Review Responsibilities

The Cook County Board of Review (formerly the Board of Tax Appeals) was created by the 89th General Assembly under statutory changes that established a three-member Board of Commissioners elected from three electoral districts.

The Board of Review is vested with quasi-judicial powers to hear and decide taxpayer complaints on the value or exempt status of real property, which includes residential, commercial, industrial, and condominium property, along with vacant land. Powers granted to the Board include the following:

1. Correct factual mistakes;
2. Review certificates of error; and
3. Order the Assessor to revise and correct the assessed value of property.
4. Recommend property for tax exempt status

The Board of Review must also defend appeals made to the Illinois Property Tax Appeal Board (PTAB) from property owners. The Board deals only with assessed valuation before equalization, not with the tax rate or the amount of a tax bill. Approximately 108,106 cases/ hearings (average) have been reviewed annually since 1995.

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Maureen Murphy, Commissioner

* Cook County Board of Review 1998-Present
* State Representative 1993-1997
* House Revenue Committee Chairman 1995-1997
* Worth Township Clerk 1985-1989
* Evergreen Park School District #231 Board 1983-1993

Letter from Commissioner Maureen Murphy

Challenges and successes marked the 2002 assessment year at the Board of Review. In a year in which [traditionally] the lowest number of appeals for Cook County are filed, the Board handled the third largest number of appeal filings in the 66-year history of the Board (121,370), including 12 underassessment complaints. The south-triad reassessment record represented an increase of 39,275 appeals, or 48 percent, over the last south-triad reassessment year (1999). Fifty-seven percent (57%) of taxpayers filing an appeal on their own received a reduction, while the total number of individual taxpayer filings reached an all-time record of 19,852. The average homeowners' tax savings—per appeal—was $330, an increase of $30 over the last south-triad reassessment year. Taxpayers throughout Cook County were undeniably successful in obtaining fair assessments when their properties were appealed at the Board with factual and accurate complaints.

Cook County taxing districts attained success as well. The Board completed its work on schedule—a product of hard work and dedication by the three Commissioners' staffs. Adjourning the session in a timely manner (third earliest closing in sixteen years) allowed, the tax bill

preparation process to continue to the Clerk and Collector's offices, respectively.

The magnitude of the Board's work demonstrates how the Cook County Board of Review is unequaled in property assessment appeals in the United States. Cook County, which is the second most populous county in the nation, has over 1.6 million parcels of property. In comparison, Orange County, California, which is the most populous county, has 823,674 parcels of property. The total number of parcels appealed in Orange County in 2002 was 7,350—or 0.89 percent—of the total. Cook County, on the other hand, received 121,370 appeals—or 8 percent—of the total. DuPage County has 320,342 parcels of property, of which 469—or 0.15 percent—were appealed. The collar county with the closest percentage of appeals to Cook County was Lake County, with 247,223 parcels of property, of which 3,709—or 1.5 percent—were appealed. The comparative analysis of how Cook County assessment appeals greatly outnumber all neighboring counties shows how formidable the task of Assessment fairness is for the Board. Challenges posed from the extremely high number of appeals are welcome, however, as it proves the Board serves a vital function in correcting unfair and erroneous assessments.

Taxpayer education and assistance continued in the 2002 assessment year. An increase in popularity and awareness can be cited as a contributing factor to the heightened number of appeals at the Board. Over 40 outreach "seminars" were held throughout the year, with co-sponsors including Commissioner Peter Silvestri, Elk Grove Township Assessor Carosielli, State Senator Wendell Jones, and the Tinley Park Kiwanis Club.

The 2002 Assessment Year Annual Report is the fifth annual report published for Cook County taxpayers.

Hopefully the information provided herein will help illustrate the services provided by the Board and its operations. Suggestions for improvement, along with questions and concerns, are always welcome. "We're here to help. . ."

Legislative Policy Summary: Year-in-Review

The Illinois General Assembly considered several important property tax initiatives during the 2002-2003 session. Proposed legislation (Senate Bill 620) that would have eliminated the right of Cook County commercial and industrial business owners from appealing their property assessments to the Property Tax Appeal Board (PTAB) was resoundingly defeated in the Illinois House. Several bills that would have punched holes in the property tax cap law were passed but subsequently vetoed by the Governor, who recognized that the bills were a property tax increase. A pro-senior citizen bill, which allows the senior homestead exemption to be applied on a pro-rata basis, successfully became law. In addition, new reporting requirements for appeal cases before the PTAB were passed and signed into law.

Local elected officials who lobbied for passage of Senate Bill (SB) 620 were effectively advocating the removal of due process and fairness for a significant majority of Cook County property taxpayers. Thirty (30) years passed before Cook County taxpayers were provided the same right as Illinois' 101 other counties to appeal their property assessments before the PTAB. In 2003, the Illinois General Assembly was asked to take away the right for Cook County non-residential owners.

Senate Bill 620 threatened jobs, homeowners and the economy. Taxpayers who most benefit from the rights of-

fered by the PTAB are small business owners and home5owners. Although the circuit court is available for appeals, it is cost prohibitive for small businesses to hire legal representation. Passage and enactment of the legislation would have lead to unfair assessments, which translate into unfair taxes, business owners being unprofitable, loss of jobs and losses in the tax base. Senate Bill 620 would have been one more nail in Cook County's economic coffin.

Fortunately, many legislators in Springfield were contacted and informed about the misguided attempt to rob taxpayers of fairness and equity. Many Cook County lawmakers fought the initiative, and the bill was defeated. Taxpayers in Cook County and statewide must remain vigilant and active in expressing their concerns. Tax fairness should be fair for all, not selective.

General Assembly Legislation

Senate Bill 620 (Jones. E./Currie)—amends the Property Tax Code to prohibit all taxpayers of property (except residential) from appealing their assessments at the PTAB beginning in assessment year 2003.

Status: Passed the Senate (33-20-1), defeated in the House (27-77-12).

Senate Bill 83 (Link/Saviano)—amends the Property Tax Extension Limitation Law to allow the Cook County Forest Preserve District to levy property taxes for coverage of a $100 million bond issue.

Status: Vetoed by the Governor

Senate Bill SOS (Collins/Mathias)—amends the Senior Citizens Homestead Exemption provision in the Property Tax Code to allow taxpayers eligible for the benefits of the provision to receive a pro-rata exemption for the assessment year if the property is first occupied after January 1.

Status: Public Act 93-511

House Bill 2567 (Mendoza/Crotty)—amends the Property Tax Code to require the Property Tax Appeal Board (PTAB) to annually provide the following information to the Governor and the General Assembly: (1) total number of cases for commercial and industrial property requesting a reduction in assessed value or $100,000 or more for each of the last 5 years; (2) total number of cases for commercial and industrial property decided by the PTAB for each of the last five years; (3) total change in assessed value based on PTAB decisions for commercial property and industrial property for each of the last 5 years; and (4) requires the PTAB to electronically distribute every 30 days) to the Cook County Assessor certain information about appeals to the PTAB.

Status:Public Act 93-248

PTAB and the Board of Review

The Cook County Board of Review (BoR) and the Illinois Property Tax Appeal Board (PTAB) share a symbiotic relationship. The mandate of each entity is to provide taxpayers with an unbiased forum for appealing assessments at no cost to the property owner. Before taxpayers can appeal to PTAB they must first appeal at the BoR. Once an appeal is filed at PTAB, the BoR

assumes the responsibility of defending its earlier decision. Both the appealing taxpayer and the BoR are required to submit written evidence to support their respective positions. Either party may request an oral hearing. If neither party requests an oral hearing, the PTAB makes its decision based solely on the written evidence.

Local taxing bodies such as school districts have a significant financial interest when large industrial or commercial property owners appeal their assessments. Therefore, they are granted "intervener" status if they want to present evidence to influence PTAB's decision. There is no limit to the number of interveners who can present evidence in a particular case.

Prior to (then) Representative Maureen Murphy's landmark legislation in 1996, Cook County taxpayers were the only taxpayers in Illinois who were not allowed to appeal at PTAB. Since 1996, the number of PIN's appealed at PTAB has risen dramatically from 724 in assessment year 1996 to 5,799 in 1997 to over 12,740 in 2001. In 1999, more than 52% of Pin's filed for appeal at PTAB resulted in a reduction. These reductions totaled over $186 million in assessed value and were attributable to decisions by PTAB and settlements between the appellants and the BoR. [statistics for 2000 PTAB cases were not available as of the date of this report].

The Board of Review's role in exempting property

The Board of Review examines applications from governmental, charitable and religious organizations that believe they are eligible to be removed from the property tax system. The requirements for exempt status in each application vary, but generally the Board of Review

examines each case to determine whether the property is specifically exempt by statute and whether the property owner has met the required burden of proof. In cases where there is a question of law or an incomplete file, the Board may hold a public hearing. The Board may also elect to hold a public hearing when a taxing body objects to an application. In either case, the petitioner is notified by mail of their hearing date. Following the hearing, a recommendation on exempt status is sent to the Illinois Department of Revenue. While the Board makes a recommendation, only the State of Illinois may remove property from the property tax roll. Last year the Board processed 464 religious/charitable and 2,666 governmental property parcels requesting exempt status.

Total Parcels Filed by Year

Year	# Parcels
1981	40,691
1982	49,530
1983	34,122
1984	41,365
1985	25,786
1986	22,918
1987	27,309
1988	32,912
1989	38,331
1990	31,137
1991	69,659
1992	63,266
1993	57,510
1994	90,295
1995	80,073
1996	73,071
1997	110,063
1998	93,556
1999	82,095
2000	153,972
2001	150,650
2002	121,370
22 Year Average	67,713

Sources: Board of Review Annual Reports. Office of Cook County Assessor, Annual Board of Review Analysis

Overall Successful Appeals

Year	
1981	38.00
1982	29.00
1983	23.00
1984	24.50
1985	24.00
1986	25.40
1987	30.10
1988	32.10
1989	43.70
1990	36.30
1991	43.40
1992	38.80
1993	31.40
1994	35.90
1995	37.50
1996	30.40
1997	45.60
1998	45.30
1999	43.15
2000	67.00
2001	61.83

2002	50.67
22 Year Average	38.05%

Sources: Board of Review Annual Reports. Office of Cook County Assessor, Annual Board of Review Analysis

Total Board Reductions in Assessed Valuation

Year	Amount in Million
1983	127.90
1984	156.80
1985	76.60
1986	125.50
1987	172.70
1988	174.20
1989	157.60
1990	179.70
1991	321.80
1992	304.20
1993	296.40
1994	362.90
1995	392.90
1996	303.40
1997	401.00
1998	496.00
1999	371.47
2000	937.69
2001	895.65
2002	803.28
20 Year Average	352.88

Sources: Board of Review Annual Reports. Office of Cook County Assessor, Annual Board of Review Analysis

Year	Number of Filing
1981	5,822
1982	5,990
1983	5,778
1984	5,917
1985	4,181
1986	2,948
1987	3,073
1988	6,391
1989	14,469
1990	6,754
1991	12,949
1992	14,990
1993	11,074
1994	14,018
1995	13,463
1996	10,952
1997	11,392
1998	12,109
1999	15,314
2000	17,536
2001	17,568
2002	19,852
22 year average	10,570

Sources: Board of Review Annual Reports. Office of Cook County Assessor, Annual Board of Review Analysis

Percentage of Individual Cases Receiving Some Reduction

Year	%
1981	53
1982	44
1983	33
1984	30
1985	30
1986	40
1987	50
1988	49
1989	67
1990	56
1991	61
1992	56
1993	49
1994	49
1995	52
1996	48
1997	55
1998	57
1999	60
2000	69
2001	68
2002	57

22 Year Average	51.50%

Sources: Board of Review Annual Reports. Office of Cook County Assessor, Annual Board of Review Analysis

Average Homeowners Tax Savings per Appeal Won

Year	$
1981	369.00
1982	204.00
1983	175.00
1984	247.00
1985	224.00
1986	241.00
1987	348.00
1988	260.00
1989	228.00
1990	398.00
1991	260.00
1992	280.00
1993	338.00
1994	287.00
1995	332.00
1996	338.00
1997	311.00
1998	370.00
1999	300.00
2000	335.00
2001	320.00
2002	330.00
22 Year Average	$295.23

Sources: Board of Review Annual Reports. Office of Cook County Assessor, Annual Board of Review Analysis

2002 Appeals by Township

Township	Total Appeals
Barrington	590
Berwyn	1,537
Bloom	2,300
Bremen	3,737
Calumet	611
Cicero	1,712
Elk Grove	2,274
Evanston	2,091
Hanover	1,466
Hyde Park	4,355
Jefferson	5,501
Lake	4,823
Lake View	6,824
Lemont	1,104
Leyden	2,129
Lyons	6,095
Maine	4,106
New Trier	2,276
Niles	3,051
North Chicago	4,014
Northfield	5,243
Norwood Park	352
Oak Park	3,309

Orland	3,991
Palatine	3,216
Palos	2,813
Proviso	5,648
Rich	3,031
River Forest	1,402
Riverside	813
Rogers Park	873
Schaumburg	2,986
South Chicago	3,375
Stickney1	453
Thornton	7,829
West Chicago	7,144
Wheeling	3,884
Worth	5,716
Total	123,574*

* The total appeals number includes applications for exempt property and duplicate applications.

Triennial Assessment Districts

of Cook County

Townships in Cook County

1. New Trier
2. Evanston
3. Norwood Park
4. River Forest
5. Oak Park
6. Riverside
7. Berwyn
8. Cicero
9. Stickney
10. Calumet
11. Lake View
12. North
13. Rogers Park

2005

Bloom

Rich

Thornton

Bremen

Orland

Lemont

Palos

Worth
Calumet
Stickney
Lyons
Proviso
River Forest
Riverside
Oak Park
Berwyn
Cicero
New Trier
Evanston
Norwood Park
River Forest
Oak Park
Riverside
Berwyn
Cicero
Stickney
Calumet
Lake View
North
Rogers Park

2004
Barrington
Palatine
Wheeling
Northfield
New Trier
Evanston
Niles
Maine
Leyden
Norwood Park
Schaumburg
Hanover
Elk Grove

2003
Jefferson
Lake View
West Chicago
North Chicago
South Chicago
Lake
Hyde Park
Rogers Park

Did You Know. . . . . .?

- Cook County is the second most populous county in the United States (first is Orange County, CA).
- There are 5.4 million people in the 954 square miles that make up the county of Cook.
- Cook County's population is as large or larger than 36 states.
- The Board of Review was called the Board of Tax Appeals prior to 1998.
- The Board of Review processed 121,370 appeals in 2002 (each Property Index Number "PIN" appealed counts as one appeal).
- There are 1,673,733 parcels of land in Cook County.
- Of the 121,370 appeals processed by the BoR in 2002, 51% had their assessment reduced.
- In assessment year 2002 the average reduction in property taxes for a residential property owner who successfully appealed his assessment was $330.
- In assessment year 2002, 101,518 appeals were filed by attorneys representing either individuals or corporations and 19,852 were filed by individuals representing themselves.
- The BoR has a current (2002) budget of $8,544,889, a 3.3% increase over 2001.
- The BoR has approximately 130 employees.
- There are 1,386,238 residential parcels in Cook County.
- In assessment year 2002 the BoR reduced total assessments by $803,280,000.

- Of the 150,650 cases appealed to the BoR in 2001, approximately 12,739 were later appealed to the Illinois Property Tax Appeal Board.
- The BoR is administered by three Commissioners, Maureen Murphy (Evergreen Park-i), Joseph Berrios (Chicago-2) and Robert Shaw (Chicago-3), who are elected from individual districts.
- Commissioner Maureen Murphy's first district includes all or part of 27 townships and 3 Chicago wards.
- The chairmanship of the BoR is rotated between commissioners every year.
- The longest serving BoR commissioner is Joseph Berrios who was first elected in 1986.

Taxpayer Assistance and Education: #1 Priority

In its' fifth year, the Taxpayer Outreach Program has held over 200 seminars in approximately 30 townships. My office created an aggressive seminar outreach campaign that seeks to educate Cook County property taxpayers of their appeal rights at the Board of Review and the various County services available. This pro-taxpayer program helps to demystify the property assessment process and encourage the filing of assessment reduction appeals.

Co-sponsors of the seminars have demonstrated their commitment to fair and equitable taxation through hosting a seminar in their district, village, or township. The message sent through co-sponsorship of a seminar is clear: fair taxation through empowerment of the taxpayer.

The notable success of the program suggests its continuation and expansion in the coming year. My office is willing to work with individuals and organizations willing to co-sponsor an outreach seminar. Please contact my Outreach Coordinator, Christine Dmyterko (312) 603-3644, if you have an interest in being a co-sponsor.

Outreach Co-Sponsor - Assessment Year 2002

- Assessor Schofield Gross - Riverside Township
- Assessor Rogue Weiland - River Forest Township
- Commissioner Peter Silvestri - River Forest Township
- Meskill Senior Center - New Trier
- Rep. Michael McAuliffe & Commissioner Peter Silvestri - Norwood Park Township
- Assessor Kenneth Jacobowski - Lemont Township
- Oak Forest Rotary - Bremen Township
- United by Faith Lutheran Church - Worth Township
- Tinley Park Kiwanis Club - Bremen, Rich & Orland Townships
- Representative Skip Saviano, Supervisor Brad Stephens & Commissioner Peter Silvestri - Leyden Township
- Mayor Jean Moran - Palos Township
- Assessor Connie Carosielli - Elk Grove Township
- Des Plaines Lions Club - Maine
- Mayor Ed Zabrocki & Trustee Brian Maher - Tinley

Park

- Commissioner Liz Gorman & Senator Dave Sullivan —Maine Township
- Supervisor Jack Murphy & Assessor John Z. Toscas Worth Township
- Mayor Anthony Calderone - Village of Forest Park
- Assessor Patricia Damisch - North field Township
- Park Ridge Massiah Brotherhood
- Mayor Dan McLaughlin - Orland Park
- Alderman Brian Doherty, Rep. Michael McAuliffe & Commissioner Peter Silverstri - Jefferson
- Assessor Steve Klean - Orland Township
- Senior Services of Evergreen Park - Worth
- Assessor Paul Froehlich - Schaumburg
- Senator Wendell Jones, Rep. Sidney Mathias, Coin. Liz Gorman & Assessor Dolores Stephan—- Wheeling Township
- Mayor James Sexton - Evergreen Park
- Assessor Susan Fares & Supervisor TJ. Somer - Bloom Township
- West Suburban Landlord's Association
- Park Forest AARP
- Arlington Heights Chamber of Commerce
- Cook County Assessor's Association
- Mount Prospect Chamber of Commerce

- Cook County Township Supervisors
- Northwest Tax Watch
- Senator Wendell Jones—Palatine Township
- President Kyle Hastings—Orland Hills

We're Here to Help!

Board of Review

Cook County Board of Review

District I

Commissioner Maureen Murphy

District 2

Commissioner Joseph Berrios

District 3

Commissioner Robert Shaw

Satellite Office Locations

Townships in

Suburban Cook Co.

- New Trier
- Evanston
- Norwood Park
- River Forest
- Oak Park
- Riverside
- Berwyn
- Cicero
- Stickney
- Calumet
- Lemont

Townships in
The City of Chicago,
Cook Co.

- North Chicago
- South Chicago
- West Chicago
- Lake
- Lake View
- Rogers Park
- Jefferson
- Hyde Park

Website: www.cookcountyassessor.com

Docket No. ___

COMMERCIAL APPEAL

State of Illinois - Property Tax Appeal Board

Room 402 Stratton Office Building

401 South Spring Street

Springfield, IL 62706-0002

(217)782-6076

TDP (217)785-4427

Suburban North Regional Office Facility

9511 W. Harrison Street, Suite 171

DesPlaines, IL 600 16-1523

(847)294-4360

TDD (847)294-4371

For Assessment Year 1997

Are you appealing off a recently issued township equalization factor? (Multiplier) _____Yes _____No

If an appeal was filed with the Property Tax Appeal Board on this Tax Parcel for the prior year, please indicate the Property Tax Appeal Board docket number assigned to that appeal: _____

Section I

This form must be completed and filed within 30 days of the postmark on the decision you received from the Board of Review/ Board of Appeals.

Any additional written evidence must be submitted with this PTAB form. If you are unable to submit the additional written information with this form, a letter requesting an extension of time for filing must be submitted with this form. Without a written request for an extension, no evidence will be accepted after the 30 days. The Property Tax Appeal Board will grant only reasonable requests up to 90 days. A hearing shall be granted if any party so requests in writing.

WHERE TO FILE THIS APPEAL:

If your property is located OUTSIDE of Cook County, file your appeal and all related documentation with the SPRINGFIELD office. If your property is located IN Cook County, file your appeal and all related documentation with the DESPLAINES office. The addresses are listed above. Without prior Property Tax Appeal Board approval, a separate appeal must be filed on each individual Property Identification Number (P.I.N.).

This Form Must Be Submitted in Triplicate

All Evidence Must Be Submitted in Duplicate

Section II

Appellant The Lurie Company

Street 221 N. LaSalle Street

City Chicago, Illinois 60602-2605

Attorney for Appellant Leonard W. Golan, Ltd

Doodv & Lafakis, Ltd.

Street 33 N. LaSalle Street - 27th Floor

City Chicago State, Illinois Zip 60602-2605

Telephone (312) 236-7216

Petition is hereby made to appeal from the final, written decision of the Cook County Board of Review/ Board of Appeals relating to the property described below. Notice of such decision was postmarked on July 13, 1998.

Submit a copy of the Notice of Final Decision on Assessed Value by the Board of Review/ Board of Appeals.

2a Property ID No. (P.1.N.): 17--09-419-001

Township: South

Address of Property: 221 N. LaSalle Street

(Cook County) Property Class No.: 5-91

Volume No.:510

2b If the appellant is not the owner of the property, give name and address of the property owner:

Owner

Address

2c The assessments of the property for the year as made by the:

1. Assessor

Land $3.192.000

Impr. $4,106,831

Total $7.298.831

2. Board of Review / Appeals

Land $3.192.000

Impr. $4,106,831

Total $7.298.831

3. Appellant's Claim

Land $3.192.000

Impr. $1,444.000

Total $4,636,000

NOTE: Lines 1 through 3 must be completed. This information is available from the Supervisor of Assessments, County Assessor or the Board of Review/Board of Appeals offices.

2d This appeal is based on: (You must check one or more boxes.)

____ Recent Sale - Complete Section IV____

Comparable Sales - Complete Section V

____ Contention of Law - Submit Legal Brief_____

2e Date (7/22/98)

Assessment equity - Complete Section V

Recent Construction - Complete Section VI

X Recent Appraisal

Signature /s/_____

Leonard W. Golan, Ltd

Doody and Lafakis, Ltd.

(Office Use Only)

NOTE: IF AN APPRAISAL IS SUBMITTED

SECTIONS III THROUGH VII DO NOT NEED TO BE COMPLETED

Section III - Description of Property

Land Size (indicated square feet or acres):Number of Buildings:

Building Size (square feet):Number of Floors:

Square Footage per Floor: _____

Construction:Frame__Brick _____Steel_____Other: _____

Basement: Yes____No Basement Use: _____

Other Improvements:

List the use of the building and the square footage attributable to that use:

Office Space: _____ yes_____no Square Footage:

Warehouse:_____yes_____no Square Footage:

Apartments: yes _____no_____ Number of Apartments:

Retail: yes_____no_____ Square Footage:

Other: _____Square Footage: _____

If there is more than one building on this parcel, provide the following information:

Building #1 Age _____ Size _____Use _____

Building #2 Age _____Size _____Use

_____

Building #3 Age _____ Size _____Use _____

Section IV - Recent Sale Data

Generally, the price of a recently sold property is considered the best evidence of value. The more proximate in time the sale occurs to the assessment date of your appeal, the more relevant the evidence becomes in establishing the market value of the property. You must submit a valid settlement statement, sales contract and Real Estate Transfer Declaration for recent sale consideration.

Read Carefully and Answer All of the Questions

Full consideration (sale price): _____
Date of sale: _____

From whom purchased:

Is the sale of this property a transfer between related parties or related corporations? yes _____no

Sold By: ____Owner _____Realtor_____Auction _____Other:_____

Name of Realtor Firm: _____
Agent:

Was this property advertised for sale:_____ yes_____no
How long of a period?

If so, in what manner? ____local paper .multiple listing____other: _____

Was the property sold in settlement of: ____an installment contract _____a contract for deed _____a foreclosure?

Was the seller's mortgage assumed? yes ____noIf yes, specify the amount $_____

If renovated, amount spent before occupying $_____ Date occupied:

Date _____

Signature_____

Signature of Owner

Section V - Comparable Sales/ Assessment Equity Grid Sheet

An appraisal which establishes the market value of the subject property under appeal as of the assessment date may also be submitted in place of completion of this section. If a hearing is held for this appeal, the Property Tax Appeal Board will be better able to judge the weight and credibility of the appraisal if your appraiser testifies in person.

Evidence of recent sales of property comparable to the subject property, including the dates of sale, the prices paid, and a property record card (printout sheet in Cook County), or description of each sale showing how it compares to the subject property may also be submitted.

Evidence of assessments of property similar to the subject property, including the current assessment of each property, the property record card (printout sheet in Cook County) or description of each sale showing how it compares to the subject property may also be submitted.

Evidence of assessments of property similar to the subject property, including the current assessment of each property, the property record card (printout sheet in Cook County) for each comparable property, or description of eac property demonstrating its comparability to the subject property may also be submitted.

NOTE: Provide at least three comparables. All comparables should be similar to the subject in size, design, age amenities and location.

Photographs of the comparables should be submitted.

Subject Comp #1 omp #2 Comp #3

Property Index No.

Address

Proximity to Subject (Cook County)

Assessment Class (Cook County)

Volume

Total Land Sq. Ft

Total Building Sq. Ft.

Age of Building(s)

Land-to-Building Ratio

Number of Buildings

Number of Stories

Number of Apartments

Apartment Mix

Exterior Construction

Parking Sq. Ft.

Sprinkler System

Office Space Sq. Ft.

Warehouse Sq. Ft.

Site Improvements

Date of Sale

Sales Price

Sales Price / Sq. Ft.

Land Assessment

Land Assmt / Sq. Ft.

lmpr. Assessment

Impr. Assessment] Sq.Ft

Total Assessment

Total Assmt / Sq. Ft.

Section VI - Recent Construction Information

Submit evidence of recent construction of the subject property including the price paid for the land, construction costs of the building(s), and include all labor costs. Include the complete and final statement from the general contractor. NOTE: If the appellant provided any labor or acted as the general contractor, evidence of the value of this service should be included with the evidence of the other construction costs.

The building was constructed, or remodeled, an addition added, or other building erected on

_____

Date

Date Land Purchased _____

Total Cost:Land $ _____

Improvement(s) $_____

Does this amount include all cost incurred for the construction, such as contractor's fees, architectural or engineering fees, landscaping and/or building permits? yes_____no

Date the building was substantially complete or initially used _____

Date the remodeling was completed

Date the addition or other building was completed

Did the owner, or a member of the owner's family, act as the general contractor? _____yes_____no

Was any non-compensated labor performed?

yes _____no

If yes, please describe and provide an estimated value of the labor _____

NOTE: A Contractor's Affidavit/Statement or documentation of the total cost must be submitted to the Property Tax Appeal Board.

Section VII - Recent Photographs of the Subject Property and Comparable Properties

Docket No.

COMMERCIAL APPEAL

State of Illinois—Property Tax Appeal Beard

For Assessment Year 1998

* * * *

Appellant The Lurie Company

Street 221 N. LaSalle Street

City Chicago, Illinois 60602-2605

Attorney for Appellant

Doodv & Lafakis, Ltd.

Street 33 N. LaSalle Street - 27th Floor

City Chicago State, Illinois Zip 60602-2605

Telephone (312) 236-7216

* * * *

2a Property ID No. (P.I.N.): 17-09-419-001

Township South

Address of Property Class No. 5 91

Volume No: 510

* * * *

2c The assessments of the property for the year as made by the:

1. Assessor

Land $3.192.000

Impr. $4,106,831

Total $7.298.831

2. Board of Review / Appeals

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Total $7.298.831

3. Appellant's Claim

Land $3.192.000

Impr. $1,444.000

Total $4,636,000

NOTE: Lines 1 through 3 must be completed. This information is available from the Supervisor of Assessments, County Assessor or the Board of Review/Board of Appeals offices.

** * *

2d This appeal is based on: (you must check one or more boxes.)

___ Recent Sale ___ Assessment equity

___ Comparable Sales ___ Recent construction

___ Contention of Law _X_ Recent Appraisals

2e Date: July 23, 1999

Signature /s/_____

Patrick C. Doody

Attorney or Appellant only

LAW OFFICES OF
DOODY AND LAFAKIS, LTD.
A Professional Corporation
27th Floor
33 North LaSalle Street
Chicago, Illinois 60602

(312) 236-7216
Fax (312) 580-1592

Patrick C. Doody*
Gregory J. Lafakis*

* also admitted in Wisconsin

February 15, 1999

Clerk
Property Tax Appeal Board
9511 W. Harrison Street
Suite 171
Des Plaines, IL 60016

Re:THE LURIE COMPANIES
Docket #: 97-24242-C-3

Dear Sir:

We are in receipt of the county's evidence filed in the referenced matter. Although we did not make any claims to any particular assessment level or sales ratio study findings in our initial appeal and evidence, several items of evidence from the county have now placed the assessment level into controversy.

We now feel compelled to provide additional argument and evidence to rebut the County's contentions regarding

appropriate uniform levels of assessment in addition to the proper market value of the property. Specifically we submit a request that the PTAB take notice of the official sales ratio studies for Cook County which are annually conducted by the Illinois Department of Revenue for equalization purposes. Attached are copies of those published studies for 1992, 1993, 1994, and 1995. It is further requested that the PTAB also take notice any official studies subsequent to 1995 which have relevance to this appeal.

This concludes the production of evidence for the appellant. An immediate hearing on this matter is requested.

Sincerely,

/s/Gregory J. Lafakis

No.

IN THE
SUPREME COURT OF ILLINOIS

COOK COUNTY BOARD OF REVIEW,	)
	) Petition for Leave to
	) Appeal from the
Petitioner,	) Appellate Court of
V.	) Illinois, First Judicial
	) District, No 1-01-3232
	)
ILLINOIS PROPERTY TAX APPEALBOARD, an administrative agency createdby 35 ILCS 200/7-5, and THE LURIECOMPANY, (33 N. LaSalle, Chicago),taxpayer,	) There Heard on a Petition for Review of a Decision of the Property Tax Appeal Board
	)
	) FTAB Docket Nos.
Respondents.	) 97-24242-C-3 and
	) 98-26195-C-3

PETITION FOR LEAVE TO APPEAL
OF THE LURIE COMPANY

Attorneys for The Lurie Company:

Leonard W. Golan, Esq.
Patrick C. Doody, Esq.
Liat R. Meisler, Esq.
Owen P. Quinn, Esq.
Field & Golan LLP
70 West Madison Street
Suite 1500
Chicago, Illinois 60602-4206
(312) 263-2300
Atty. No. 40385

No.

IN THE
SUPREME COURT OF ILLINOIS

COOK COUNTY BOARD OF REVIEW,	)
	) Petition for Leave to
	) Appeal from the
Petitioner,	) Appellate Court of
V.	) Illinois, First Judicial
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	)
ILLINOIS PROPERTY TAX APPEALBOARD, an administrative agency createdby 35 ILCS 200/7-5, and THE LURIECOMPANY, (33 N. LaSalle, Chicago),taxpayer,	) There Heard on a Petition for Review of a Decision of the Property Tax Appeal Board
	)
	) FTAB Docket Nos.
Respondents.	) 97-24242-C-3 and
	) 98-26195-C-3

NOTICE OF FILING BY MAIL

To: (See service list attached.)

PLEASE TAKE NOTICE that on January 20, 2004, the undersigned filed one (1) original and twenty (20) copies of a Petition for Leave to Appeal submitted by The Lurie Company with the Clerk of the Illinois Supreme Court, Springfield, Illinois, by depositing same in the United States mail at 70 West Madison Street, Chicago, Illinois, before 5:00 p.m. in an envelope bearing sufficient postage.

Three copies are hereby served upon you.

Respectfully submitted,

The Lurie Company

BY: _____
/s/ One of its Attorneys

Leonard W. Golan, Esq.
Patrick C. Doody, Esq.
Liat R. Meisler, Esq.
Owen P. Quinn, Esq.
Field & Golan LLP
70 West Madison Street
Suite 1500
Chicago, Illinois 60602-4206
(312)263-2300
Atty. No. 40385

PRAYER FOR LEAVE TO APPEAL

Pursuant to Supreme Court Rule 315, The Lurie Company (hereinafter referred to as, "Lurie") respectfully requests that it be granted leave to appeal the December 16,2003, decision of the Illinois Appellate Court, First District. The case before the Court presents important questions of first impression involving real estate property taxes which, if left unchanged, will deny taxpayers due process and equal protection guaranteed to them by the Illinois and the United States Constitutions.

It is Lurie's contention that the First District has mistakenlyruled that PTAB lacks the authority to consider issues that had notbeen previouslyraised bythis taxpayer at the Cook CountyBoard ofReview (Board ofReview). (Slip Opinion, at 1) The First District's erroneous ruling has deprived taxpayers of a Constitutional Right and created an undue burden on the Boards ofReview byrequiring them to become a body ofrecord. The First District's ruling is also in direct contradiction to the language of the Property Tax Code (35 ILCS 200/1, herein after referred to as "the Code") and ignores provisions of the PTAB Rules created by the General Assembly.

It is Lurie's contention that the First District also mistakenly ruled that the "21/2 times level of assessment issue" was not properly raised by the taxpayer, before the PTAB and that the PTAB could not take official notice ofthe sales ratio studies which were prepared by the illinois Department of Revenue (the Department) to assist them in determining a correct level of assessment. (Slip Op. at 6) The First District's ruling again ignores the PTAB rules and results in a deprivation of taxpayer's rights.

The First District's decision also creates a conflict among the illinois Appellate districts. The First District's decision is in conflict with the Second District's decision in, LaSalle

Partners, Inc. v. Property Tax Appeal Board, 269111. App. 3d 621,646 N.E.2d 935 (2~ Dist. 1995), in which the Second District recognized the PTAB's power and duty to address issues that were not raised at the board ofreview. Due to the First District's decision in this case, only in Cook County is the PTAB restricted and limited inaddressing only those issues raised by the taxpayer at the Board of Review. In the other 101 counties of the State's 102 counties, the PTAB can address all issues raised before it.

When the First District arrived at another erroneous conclusion and ruled that the taxpayer did not adequately raise the 2½ times level ofassessment issue at the PTAB and as a result the PTAB was barred from taking official notice ofthe Department's sales ratio studies it also createed a conflict among the Appellate districts. Other appellate districts have acknowledged the PTAB's authority to take official notice of the Department's sales ratio studies. However, in the present case, the First District has barred PTAB from taking notice of such studies..

Finally, the First District's decision is of general importance in that it will effectivelyprevent most Cook County commercial and industrial real estate taxpayers from receiving a fair and equitable assessment in accordance with their Constitutional Rights because these taxpayers, will not be able to rely on the PTAB taking official notice ofthe Department's sales ratio studies, but ratherwill have to provide expert witnesses to establish the validity of the studies.

Lurie requests that this Court grant leave to appeal and reverse the First District's decision which is in conflict with the Code and with decisions of another appellate district, and which also raises an issues of general importance which requires this Court's attention. Accordingly, Lurie asks this Court for leave to appeal and rectify the First District's erroneous decision. Lurie asks that this Court not

only address whether the First District's decision was correct, but also reach the issue which the First District declined to confront: whether Illinois' Constitution requires the PTAB to apply a level of assessment to cormmercial property which is not more than 2'A times the level applied to residential property (the "2 1/z times issue").

DECISION OF THE APPELLATE COURT

On December 16,2003, the appellate court entered an opinion reversing and remanding the PTAB 's decision. (Appendix at A-i) Lurie filed an affidavit of intent to seek leave to appeal on January 6, 2004. (Appendix at A-i 1)

POINTS RELIED ON FOR REVERSAL

The First District improperly ruled that the issue of uniformity was not duly raised before the PTAB. Indeed, the First District failed to take into account the long time historical manner in which property tax cases have been and are now handled before the PTAB and the Boards of Review, ignored provisions of the Code and the PTAB rules, and, failed to follow decisions of other appellate districts of this state, thereby violating the rights guaranteed to certain taxpayers, including this taxpayer, by the Illinois and the United States Constitution.

Furthermore, the First District improperlyruled that the 2½ times level assessment issue was not properly raised and that the PTAB could not take official notice ofthe Department's sales ratio studies.

In doing so, the First District's Opinion denies most Cook County non-residential taxpayers the level of assessment they are guaranteed by the illinois Constitution, ignores provisions of the Code, PTAB rules, fails to follow the decisions ofother appellate districts and denies certain

taxpayers, including this taxpayer the due process guaranteed by the Illinois and Unites States Constitution.

STATEMENT OF FACTS

Lurie is the owner ofthe improved real property commonly known as 221 North LaSalle Street in Chicago, Illinois, which consists of a 70 year old 41-storymuiti-tenant office building erected on a 21,000 square foot parcel of land (the "Property"). R. Vol. I, Cl 37. In addition to office space, the Property contains two garage levels with 21,000 square feet of area. R. Vol. I, C 137. The Property is classified as a Class Sapropertypursuant to the Cook County Real Property Assessment Classification Ordinance ("Classification Ordinance"). R. Vol. I, Cl 63. Pursuant to the Cook County Classification Ordinance,Class Sacommercial and industrial properties are tobe assessed at the level of38% ofmarket value which is the highest level of assessment in Cook County. Class 2 residential properties are to be assessed at the level of 16% of market value which is the lowest level of assessment in Cook County. R. Vol. I, C55.

For the tax years 1997 and 1998, the Cook County Assessor assessed the property at $7,298,831 which converts to a market value of $19,207,450. R. Vol I, C2, C58. The Cook County Board of Review ("Board ofReview") denied Lurie's request fora valuation reduction for both years and finalized the assessment for the Property at the same $7,298,831 (market value $19,207,450) for both 1997 and 1998. R. Vol. I, C2, C58.

On July 29, 1998, Lurie filed an appeal of the final assessed valuation with the Illinois Property Tax Appeal Board ("PTAB") for tax year 1997 there identified asDocket No. 24242-C-3. R. Vol. I, C2-C5. Lurie subsequently on July22, 1999 filed an appeal with the PTAB ofthe final assessed valuation for tax year 1998, there identified as

Docket No. 98-26195-C-3. R. Vol. I, C58-C61. Both appeals were consolidated at the PTAB. The controlling facts and all ofthe evidence were identical for both years. In those consolidated appeals, Lurie sought a reduction in the assessed value to $4,636,000 arguing that the final assessed value overstated the fair market value of the Property. R. Vol. 1, C2 CC58. Lurie also argued that the proper basis for reducing the Property's assessed value is in compliance with Article IX, § 4(b) ofthe Illinois Constitution, which dictates that a level of assessment or rate ofthe highest class of property shall not exceed 21/2 times the level of assessment ofthe lowest class propertywithin a county. R. Vol. I, C 149-150.

In support of its appeal before the PTAB, Lurie introduced into evidence two written appraisals and the testimony oftwo appraisers. In opposition to Lurie's evidence submitted to the PTAB, the Board of Review presented its Notes on Appeal, which set forth the final assessment of$7,298,83 1 which at a level ofassessment of38% converts to market value of$ 19,207,450; and an unsigned appraisal report prepared byamember ofthe Assessor's Office. R. Vol.1, C21-C22, C144. At the hearing before the PTAB, the Board of Review rested on its evidence submission and did not call any witnesses to testify as to that evidence. R. Vol. I, C 144. As rebuttal evidence, Lurie submitted the Illinois Department of Revenue's Findings of the Assessment/Sales Ration Studies for 1992-1998. R. Vol. V.

Following the hearing before the PTAB on Lurie's appeal, the PTAB permitted both Lurie and the Board ofReview to address the 21/2:1 constitutional issue in post-hearing written submissions. R. Vol. I, Cl 22-123, C 144; Vol. V. After considering all the evidence and the post-hearing written submission over a nine month period, the PTAB issued its unanimous written decision on August 2, 2001, finding that the Property's market value as of both the 1997 and 1998 assessment dates was $14,450,000. The

Board ofReview has not contested these market valuations and they are not an issue in this case. The PTAB also found that a reduction in the assessment of the Property was warranted based both on the specific valuation evidence submitted by Lurie and the 21/2:1 limitation provided by Article IX, §4(b) of the fllinois Constitution. SpecificallythePTAB reduced the assessed valuation to $3,645,735 for the year 1997 and to $3,641,400 forthe year 1998. R. Vol. I, Cl 37-C163. The Board ofReview filed an appeal of the PTAB's August 2, 2001 decision with the illinois, Appellate Court, First District.

The First District characterized the "main question" in the appeal as being "whether PTAB has the authority to expand the scope ofa taxpayer's appeal to include issues never raised by the taxpayer before the Cook County Board of Review." (Slip Opinion at 1) The First District concluded that under the Administrative Review Law (735 JLCS 5/3-101 etseq. (West 2000)) and PTAB 'sown rules, the scope of PTAB's review and the relief it may grant is limited to the relief sought by a taxpayer before the Board. Id.

Relying on its opinion in Cook County Board of Review v. PTAB, 339111. App. 3d 529, 791 N.E.2d 8(2002) (hereinafter "Bosch"), the First District held that the scope ofPTAB's review should have been confined to a consideration ofthe Board's fair market value determination, as the taxpayer challenged before the Board only the fair market value assigned to its Property. (Slip Opinion at 2-3). Specifically, this Court concluded that the PTAB improperly addressed the issue of uniformity challenge as it was not timely raised by the taxpayer. (Slip Opinion at 10). The First District found that since the tax payer, as the contesting party, bears the burden to submit substantive evidence to establish a lack of uniformity, the PTAB improperly considered sales ration studies for the years 1992-95, which were not previously submitted by the taxpayer to the Board ofReview, but established that residential property in Cook

Countywas assessed at 10%, rather than the 16% required by the Classification Ordinance. (Slip Opinion at 4-5). Accordingly, without considering the merits of the PTAB's constitutional decision, the First District reversed the PTAB's deviation from the Classification Ordinance which was based on PTAB's review of the sales ratio studies, establishing an underassessment trend in Cook County residential property, and the 21/2:1 ration limitation in Art. 9 § 4(b) ofthe Illinois Constitution. Accordingly, the First District reversed the order of the PTAB applying a 25% level of assessment to the taxpayer's Property and remanded with direction to PTAB to apply the 38% level of assessment mandated bythe Classification Ordinance. (Slip Opinion at 1/2).

ARGUMENT

I. The First District's Erroneous Ruling That the PTAB Could Only Address Issues Which Had Been Raised at the Board of Review Deprives Taxpayers of Their Constitutional Right To Due Process and Equal Protection, Creates an Untenable Burden on the Boards of Review, Ignores Provisions of the Code and the PTAB Rules, and is Contrary To the Rulings of Other Appellate Districts.

A. The First District's Decision Deprives Taxpayers of Their Constitutional Right To Due Process and Equal Protection and Creates an Untenable Burden on Boards of Review.

The Illinois Constitution requires that for any county that elects to classify property for assessment purposes, as Cook Countydoes, all property within the same class be treated equally and that classification be based on reasonable

criteria. It also states that the level of assessment of the highest class in a county shall not exceed 2 '/2 times the level of assessment ofthe lowest in that county. Ill. Const., Art. 9, § 4(b). If the First District's decision remains unmodified, and if, as a result, the PTAB is forced to cease conducting de novo hearings, the constitutional rights to due process and equal protection of all parties appearing before it will be seriously compromised and the decision will have the affect of changing the statutes that pertain to assessment appeals, a duty reserved for the legislature.

The First District's decision would force taxpayers, who want to ensure that the PTAB is not foreclosed from considering new issues, to raise all possible issues, before the Board of Review which normally conducts only informal hearings. The First District's ruling means that in order to preserve its constitutional rights, a taxpayer must raise its constitutional argument at the Board level. However, the hearing and record called for at the Board of Review's level by the First District's decision do not exist and have never existed at any time in the history of the Board of Review or in the history of its predecessor agency the Cook County Board of (Tax) Appeal. Accordingly, the First District's decision would force taxpayers, who want to ensure the PTAB is not foreclosed from considering constitutional arguments, to submit evidence to the Board of Review that it does not have the resources or time to handle. The Board of Review has no mechanism for recording which issues are raised by parties at board of review hearings. This Court has previously recognized the impracticality of considering boards of review to be bodies of record. In People ex rel. Devine v. Murphy, 181 Ill. 2d 522, 693 N.E.2d 349 (1998), this Court reviewed circuit court rulings holding a tax objection provision ofthe Code unconstitutional, this Court stated that:

> [R]ecord review ofproperty tax assessments may not be feasible. As petitioner argues: "[B]oards of appeals and

> review in Illinois are not presently bodies ofrecord. To make them so given the pressures ofthe annual tax cycle would be impossible (e.g., the Cook County Board of Appeals hears from 60,000 to 90,000 complaints per year)... [R]ecord review of the board of appeals is thus wholly impractical, and it was properly rejected as an alternative by the General Assembly."

181 Ill. 2d at 536 n.2, 693 N.E.2d at 356 n.2.

The Board of Review has at all times and does now conduct informal hearings. The First District's decision would require the Board of Review to accommodate expert witnesses, court reporters, and the influx of much more documentary evidence. Inevitably, costs will increase for all at an earlier stage, and the Board of Review's decisions will be delayed. The delays at the Board ofReview will adversely affect the taxing bodies as the second installment of tax bills will be received even later then the usual tardy date. Which, in turn, will deprive the taxing bodies of their timely appropriations. The First District's decision also leaves the taxpayer in the precarious position ofbeing unable to present its constitutional argument to the Board of Review, because the Board of Review does not provide the proper forum with the proper available resources and record, orto the PTAB, who does have the resources and time to conduct hearings issue, to on constitutional but according the First District's decision not the authority. Accordingly, the taxpayer is left with a constitutional violation of due process and equal protection, but no available forum to address it and, therefore, no available remedy.

The First District based it decision in this matter, in large part, on its earlier decision in Bosch. The Appellate Court's decision in Bosch consisted of two basic holdings: "(1) the taxpayers never raised the issue of uniformity in the six of the eight cases; and (2) in the two cases, the

evidence tendered by the taxpayers is wholly inadequate for meaningful appellate review."Id. at 534. Accordingly, the Bosch, decision requires a taxpayer who wishes to raise a constitutional question in appealing his/her assessment to raise it for the first time in front of the Board of Review. Id. However, the Bosch decision, as well as First District's opinion in the current decision, either incorrectly presumes, or put the burden on the Board of Review to conduct full hearings, with voluminous witness testimony, cross examination and evidence, thus preserving the proper record for PTAB as required by the First District. Nonetheless, and despite the First District's ruling in the Bosch case over a year ago, the Board ofReview still does not conduct hearings in this manner given the practical constraints it faces.

The general rules of procedure governing administrative hearings are found in Article 10 of the Illinois Administrative Procedure Act. 5 ILCS 100/10-5 et seq. Specifically, section 10-10 provides agencies with guidelines to establish rules and procedures for contested cases, "agencyrules establishing procedures may include, but need not be limited to, the following components: pre-hearing conferences, representation interview or depositions procedures, default procedures, selection of administrative law judges, the form of the final order, the standards of proof used, which agency official makes the final decision, representation of parties, subpoena request procedures, discovery and protective order procedures, and review or appeal process within the agency. 5 ILCS 100/10-10. A contested case is defined as "an adjudicatory proceeding in which the individual's legal rights, duties, or privileges of a party are required bylaw to be determined byan agency only after an opportunity for a hearing. 5 TLCS 100/1 - 30. Accordingly, a fair hearing before an administrative agency includes the opportunity to be heard, the right to cross-examine adverse witnesses and impartiality in ruling upon the evidence. Goranson v. Department of Registration and Education of

the State of illinois, 92 Iii. App.3d 496, 501, 415 N.E.2d 1249, 1253 (Ill. Ct. App. 1980). See also, Board of Education of Community Consolidated School District No. 54 v. Spangler, 328 Ill. App.3d 747,756,767 N.E.2d 452,460(111. Ct. App. 2002) ("[A] hearing is a '[p]roceedmg of relative formality (though generally less formal than a trial), generally public, with definite issues of fact or of law to be tried, in which witnesses are heard and parties proceeded against have the right to be heard, and is much the same as a trial and may terminate final order.'...Both parties are given the opportunity to cross-examine witnesses, offer evidence and present defense or rebuttal").

The "hearings" conducted by the Board ofReview do not even come close to meeting the standard for hearings established by the Administrative Procedure Act. In fact, requiring a full administrative record before the Board of Review would necessarily upset the legislative scheme and intent underlying the statutory process within which the Board of Review is required to operate. This statutory framework establishes "various provisions setting forth procedures for expeditious presentations and dispositions of assessment are not considered body ofrecord. See People ex. Rel. Devine v. Murphy, 181 Ill.2d 525, 535, fh. 2,693 N.E.2d 349 (1998) ("[B]oards of appeal and review in illinois are not presently bodies of record. To make them bodies of record would be impossible due to the pressures of the annul tax cycle would be impossible") Rather, the Board of Review is charged with considering 60,000 to 90,000 assessment complaints within each tax year, and thus, is restricted in the manner and procedure available to it for quick and efficient disposition of all complaints. Accordingly it does not have the time and/or resources' to conduct proper proceedings to address difficult and time consuming constitutional or other legal issues, so as to preserve a proper record for the PTAB to review.

Further frustrating the Board of Review's ability to conduct a proper hearing that would be sufficient to

preserve a record for the PTAB to adjudicate complicated constitutional and legal issues, is the fact that the Board ofReview, supposedly an impartial judicial body at the first level, becomes the respondent at the next level, before the PTAB. This fact wholly frustrates the Board of Review's ability to conduct fair and impartial hearings. Indeed, in order to preserve a proper record which can be considered at a possible future PTAB hearing, the Board of Review would be placed in the awkward position ofhavingto submit evidence into its own hearing. The Board ofReview would thus be serving in a dual capacity, both as the "impartial judiciary body" and as a party and as a possible future petitioner against the taxpayer and the PTAB in the Circuit Court or the Appellate Court.

Finally, the First District's ruling would deprive taxing bodies of their right to effectively intervene in PTAB cases. The Code requires that in all cases where a change in assessed valuation of$ 100,000 or more is sought, that all taxing districts that would be affected by the change must be notified. 35 ILCS 200/16-180 (2002). However, such notification would be useless if these taxing bodies were then prohibited from raising any issues which the taxpayer had not already raised.

In many PTAB cases, there are no interveners, which leaves the Board of Review as the only entity appearing before the PTAB in opposition to the taxpayer's request for a reduced assessment. If the PTAB cannot address new issues, the Board of Review would have no opportunity to raise any issue not already raised by the taxpayer. If the First District's decision is not reversed, it will seriously compromise the rights of tax payers, taxing bodies and the Boards of Review.

Hence, this Court should grant review to make clear that boards of review are not bodies of record, and that limiting the PTAB to addressing only issues raised at the board

ofreview is contrary to law, wholly impractical and most importantly will result in no available remedy for taxpayer's whose constitutional rights to due process and equal protection have been violated.

B. The First District's Decision Ignores the Property Tax Code Which Requires the PTAB to Conduct DeNovo Hearings in Which the PTAB May Address Issues Not Raised at the Board of Review.

As it stands now, the First District's decision forces PTAB to cease considering issues not raised before the Board of Review, and, as a result, the statutory rights of all parties appearing before it are seriously compromised. The First District's ruling denying parties these rights was made in contradiction to the property tax code. By statute, taxpayers have the right to raise new issues before the PTAB. 35 ILCS 200/16-160 et. seq. (2002). Indeed, section 16-170 of the Code is entitled "Hearings," and states that the PTAB "may require the production of any books, records, papers or documents that may be material or relevant as evidence in any matter pending before it and necessary for the making of a just decision." Id. (emphasis added) Furthermore, section 16-180 provides that all appeals to the PTAB "shall be considered de novo." 35 ILCS 200/16-185(2002). Accordingly, the Property Tax Code does not restrict the PTAB from considering issues not raised at the Board ofReview's hearing. Furthermore, the Code actually authorizes the PTAB to conduct de novo hearings.

In fact, in some instances, it would be impossible for the PTAB to limit itself to considering issues raised at a previous board of review hearing because the taxpayer may appeal directly to the PTAB and bypass the board of review altogether. A taxpayer may bring a case directly to the PTAB: (1) if the sole basis for the appeal is the effect of an

equalizing factor, 35 IILCS 200/16-180(2002); (2) if the PTAB renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the board of review, 35 ILCS 200/16-185(2002); or(3) if such a decision is rendered after adjournment of the session of the board ofreview at which assessments for the subsequent year are being considered.35 TLCS 200/16-185 (2002). See Villa Retirement Apartments, Inc. v. Property Tax Appeal Board, 302 III. App. 3d 745, 752,706 N.E.2d 76, 81 (4th Dist. 1999); Cotter and Company v. Property Tax Appeal Board, 277 Ill. App. 3d 538, 544-45, 660 N.E.2d 1283, 1286-87 (2nd Dist. 1995). Thus, the PTAB must be able to consider new issues in these types of cases, and there is no logical reason for prohibiting the PTAB's consideration of new issues in other types of cases.

C. The Decision of the First District Ignores and is in Conflict with the Decision of the Second District

The ruling of the First District is in conflict with the holding of the Second District in LaSalle Partners, Inc. v. Property Tax Appeal Board, 269111. App. 3d 621,646 N.E.2d 935 (2nd Dist. 1995). ln LaSalle Partners the Second District held that the PTAB "must be able to independently evaluate the evidence, unhindered by the conclusions of the board of review below" in order to determine the "correct assessment" of the property at issue. 269111. App. 3d at 628,646 N.E.2d at 939. More specifically, the

Second District court stated:

> Under the scheme created by the PTAB statute, an appeal to the PTAB does not afford taxpayers the right to request that a higher authority rule upon the correctness of a lower authority's findings. Rather it

> affords taxpayers and taxing bodies "a second bite at the apple," i.e. an opportunity to have assessments recomputed by a reviewing authority whose power is not circumscribed by any previous assessment.

269 Ill. App. 3d at 629, 646 N.E.2d at 940.

Under the First District's opinion, neither the Board of Review nor an intervening taxing body could request any relief from the PTAB that was not requested in the taxpayer's petition. Since taxpayers are unlikely to ask that the PTAB raise their assessment, this would lead to the conclusion that the PTAB could never raise an assessment when a taxpayer files an appeal with the PTAB. This conclusion in directly contrary to that of the Second District in LaSalle Partners, Inc. Accordingly, Lurie could change its prayer for relief to include a request for a level of assessment that was no more than 2½ times the levelapplied to residential property. Lurie did make such a claim, and the Board ofReview was given ample opportunity to respond to this claim both before and after the hearing. Vol. I, R.C30; Vol.11, R. 15-16, R.C 19, R.C28

A clear conflict exists between the decisions of the First and Second Districts which requires a resolution by this Court. The First District's decision is wrong and should be reversed.

II. The First District Erroneous Ruling That the 2 'A Times Issue was Improperly Raised and That PTAB Was Not Authorized To Note the Department's Sales Ratio Studies is Contrary to the Rulings of Other Appellate Districts, and Ignores the PTAB Rules.

A. The Lurie Company Properly Raised the 2 1/2 Issue Before the PTAB.

Lurie timely raised the 2'/2 times issue at the PTAB hearing, and the PTAB gave the Board of Review multiple opportunities to respond to Lurie's claims. Vol. I, R.C30; Vol.11, R.15-16, R.C19, R.C28 Further, it was Cook County's duty to raise an objection to the PTAB's use of the Department's sales ratio studies if it thought the studies should not be used. In every appeal, the constitutional 2 '/2 times issue is implicitly before the PTAB. In a market value claim presented to the PTAB, a taxpayer must submit evidence of the property's market value. 86 Ill. Adm. Code § 1910.63. Upon determining the correct market value, the PTAB then applies the proper level of assessment, which may be determined by reference to the Department's sales ratio studies. 86 Ill. Adm. Code § 1910.50(c).

Because the PTAB's rules and practice alert parties that the PTAB will apply either the Department's sales ratio studies, or whatever assessment level is necessary to comply with the Illinois Constitution, a party that does not want the PTAB to apply the median level of assessment must object. But if the First District's decision is allowed to stand, this responsibility would be shifted to taxpayers who appeal to the PTAB, many ofwhom are pro se and unfamiliar with real estate tax law. These taxpayers would be required to actively request that the PTAB apply a level of assessment that does not exceed the constitutional maximum, because if they fail to do so, the First District would hold that they may be assigned a higher level of assessment which, violates the Constitution's 2'A times provision.

B. The First District's Erroneous Ruling Which Prohibits the PTAB from Taking Official Notice of the Department's Sales Ratio Studies Is Inconsistent with Decisions of Other District Appellate Courts and Ignores PTAB Rules.

The First District's decision creates a conflict among the appellate districts. Both the Third and the Second Districts

have approved the PTAB's use of the Departments' Sales Ratio Studies to determine proper level of assessment. See e.g., Commonwealth Edison Co. v. Property Tax Appeal Board, 124 Ill. App. 3d 228,231,463 N.E.2d 1331, 1334 (3~ Dist. 1984) (holding that assessment level established by the PTAB was not against the manifest weight of the evidence); Will County Board of Review v.Property Tax Appeal Board, 100111. App. 3d506, 508, 426N.E.2d 1238,1239 (3rdDist. 1981) (finding that the 29.57% level of assessment (which was supported by the Department's sales ratio studies) was at least "prima fade evidence" that the level of assessment of like property in Will County was lower than the 33½% figure used by the board of review for the subject property); Lake County Board of Review v. Property Tax Appeal Board, 86 Ill. App. 3d 553, 556, 407 N.E.2d 1022, 1024 (2nd Dist. 1980) (approving the PTAB's use of the Department's sales ratio studies to determine the correct level of assessment even though there was no expert testimony about the studies).

In the present matter, the First District erroneously relying on its own decision in Bosch, held that the PTAB could not take official notice of the sales ratio studies. However, the First District ignores significant distinguishing factors between the Bosch case and the case at hand. Bosch asked the PTAB to take official notice of sales ratio studies for commercial property while in the present matter, Lurie asked the PTA3 to take official notice of the sales ratio studies for residential property. This was done because the PTAB had only to refer to the Department's residential sales ratio studies to determine the maximum constitutionally allowable level of assessment for commercial property (2½ times the residential level). PTAB Rule I 920.50(c)(2) specifically empowers the PTAB to take official notice of the sales ratio studies for residential property, and neither the Board of Review nor JCAR expressed any objection to this rule. 86111. Admin. Code § 191 0.50(c)(2).

The First District apparently misunderstood which rule JCAR objected to because the court stated that the rule which JCAR objected to "did not distinguish between residential and commercial appeals." This is not the case. Rule 191 0.50(c)(2) specifically allows the PTAB to rely on the Department's sales ratio studies for residential property, while Rule 1910.50(c)(3), which applies to non-residential property, does not specifically reference the sales ratio studies. 86 Ill.Admin. Code § 191 O.50(c)(2) and (3). JCAR objected only to the second of these two rules. 22111. Reg. 11646.

Here, only the residential sales ratio studies are relevant because the PTAB must multiply the residential level of assessment by 2½ to determine the maximum constitutional level. Thus, the residential median level of assessment is the only level of assessment the PTAB need look at when computing the maximum allowable level of assessment under the 2'A times limitation. Hence, it was appropriate for the PTAB to refer to Rule 1910.50(c)(2) when determining that it could consider the Department's sales ratio studies.

The issue of whether the PTAB may take official notice of the Department's sales ratio studies is one of general importance. If the First District's decision is not reversed, Cook County non-residential taxpayers would be unable to rely on the PTAB to take official notice of the Department's sales ratio studies and to apply the median level assessment to ensure that they receive a uniform assessment. Instead, these taxpayers would be forced to call expert witnesses to testify about the studies, or, more likely, would simply relinquish their right to a fair and equitable assessment in accordance with their rights under both the Illinois and United States Constitutions.

C. The PTAB Has the Authorization to Take Official Notice of the Department's Sales Ratio Studies.

Under its rules, the PTAB may take official notice of the Department's sales ratio studies as either a matter that is "within its specialized knowledge and expertise" or as a matter"of which the Circuit Courts of this State may take judicial notice." 86111. Adm. Code § 1910.90(i). The PTAB rules also permit it to rely on evidence which establishes the applicable level of assessment "under the Constitution." 86111. Adm.Code §1910.50(c)(3). In addition, the annual sales ratio studies maybe officially noticed because they are final administrative decisions of the Department of Revenue. 35 IECS 200/8-40(2002); 735 LLCS 513-101(2002).

CONCLUSION

For all of these reasons, The Lurie Company prays that leave to appeal from the judgment of the appellate court be granted.

Respectfully submitted,

The Lurie Company

BY: _____

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APPENDIX

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No. 1-01-3232

THE COOK COUNTY BOARD OF REVIEW,	) Petition from the Property) Tax Appeal Board
Petitioner-Appellant,	)
V.	)
THE PROPERTY TAX APPEAL BOARD and THE LURIE COMPANY,	) 97-24242-C-3 and) 98-26195-C-3
Respondents-Appellees.	)

JUSTICE CAHILL delivered the opinion of the court:

We address a Cook County Board of Review (the Board) appeal challenging a decision by the Illinois Pro~ Tax Appeal Board (PTAB). The main question we consider is whether PTAB has the authority to expand the scope of a taxpayer's appeal to include issues never raised by the taxpayer before the Cook County Board of Review. In this case, PTAB ruled that responsive pleadings of the Board on appeal raised issues PTAB was empowered to address. We conclude that, under the Administrative Review Law (735 LCS 5/3-101 et seq. (West 2000)) and PTAB's own rules, the scope of PTAB's review and the relief it may grant is limited to the relief sought by a taxpayer before the Board. We reverse the order of PTAB applying a 25% level of assessment to the taxpayer's property and remand with directions to PTAB to apply the 38% level of assessment mandated by the Cook County Real Property Assessment Ordinance (Cook County ordinance) (Cook County Real Property Assessment Classification Ordinance, Ord. No. 80-0-14 (amended November 6, 1997)).

The taxpayer, the Lurie Company, owner of commercial SA property, filed an appeal with PTAB following an unsuccessful appeal before the Board. PTAB entered an order *adjusting the fair market value of the property* to $14,450,000. PTAB then applied a 25% level of assessment instead of the 38% applied to commercial 5A property mandated by the Cook County ordinance. The Board did not appeal PTAB's reduction of the fair market value of the property. PTAB's deviation from the Cook County ordinance was based on PTAB's review of sales ratio studies purporting to establish an under assessment trend in Cook County residential property, and on PTAB's reading of the 2 1/2 :1 ratio limitation of the illinois Constitution (Ill. Const. 1970, art. IX §4(b)). This limitation prohibits the assessment level of the highest classification in a county from exceeding 2 ~/2 times the level applied to the lowest classification in that county.

It is undisputed that the taxpayer challenged before the Board only the fair market value assigned to its property. The taxpayer did not raise a uniformity claim before the Board based on a disparate assessment level. The Board's decision upheld the fair market value assigned by the assessor and applied the statutory 38% assessment level mandated by the Cook County ordinance. The taxpayer then appealed to PTAB, again challenging only the fair market valuation. The only materials the taxpayer submitted were appraisal reports supporting the taxpayer's claim that the fair market value of the property was less than that assigned by the assessor and affirmed by the Board.

We conclude as we did in Cook County Board of Review v. Property Tax Appeal Board 339111 App. 3d 529, 791 N.E.2d 8 (2002) (hereinafter Bosch), that the scope of PTAB's review should have been confined to a consideration of the Board's fair market value determination. But as in Bosch. PTAB addressed and decided a new issue here. How

that happened and our reasoning in rejecting PTAB's authority to do so is addressed in the balance of this opinion. Although we dispose of this appeal on the grounds that the contested issue of uniformity was not properly before PTAB, we address the arguments in support of PTAB's analysis of the uniformity issue. Our discussion of these issues is partly dicta within the context of this case. But we address the uniformity arguments because the discussion provides a context for our disposition of this appeal. We note that the discussion is based on our resolution of these issues in Bosch. where they were properly raised in two cases.

The Board's materials filed with PTAB included not only appraisal reports designed to rebut the taxpayer's fair market value evidence, but also a copy of the Cook County ordinance, case law relating to the use of sales ratio studies, a report critiquing the sales ratio studies, and a copy of the "Review of the Assessment Sales Ratio Study Program for the Illinois Department of Revenue" by the International Assessing Officers.

Based on the Board's submissions, the taxpayer then asked PTAB to take judicial notice of the sales ratio studies for the years 1992-95, copies of which the taxpayer then submitted. The taxpayer also asked PTAB to take judicial notice of "any official studies subsequent to 1995which have relevance to this appeal." The taxpayer conceded that it "did not make any claims to any particular assessment level or sales ratio study findings" in the initial appeal before the Board. But the taxpayer maintained before PTAB that the Board's submissions "have now placed the assessment level into controversy." The taxpayer also asked PTAB to take judicial notice of sales ratio studies for Class 2 residential properties. The taxpayer claimed that these studies established that residential property in Cook County was assessed at 10%, rather than the 16% required

by the Cook County ordinance. The taxpayer then reasoned that, based on this I Oo/o level of assessment for residential property, commercial property could not constitutionally be assessed at more than 25% of the fair market value.

The taxpayer renewed its request that PTAB take judicial notice of the sales ratio studies at a hearing on September 20,2000. The Board objected, claiming that it had not been made aware of the taxpayer's request for judicial notice. The Board also objected because the sales ratio evidence was not certified.

The hearing officer declined to take judicial notice of the sales ratio studies. But, the hearing officer then ruled that the Board had placed uniformity at issue by its "voluminous" submission of documents relating to sales ratio studies. The hearing officer characterized the taxpayer's submission's as "rebuttal" evidence that "was timely submitted." The hearing officer then stated that the uniformity issue was now at issue and judicial notice was unnecessaiy. He said:

> "[Tihe issue of sales ratios has already been entered without a checkmark on the petition that's already an issue, which this Board [PTAB] will consider. This Board has accepted evidence by both parties on that issue; and, therefore, I see no need at this juncture to take judicial notice of it. It's an issue in evidence."

We reject at the outset PTAB's and the taxpayer's argument that the uniformity issue was timely raised. The hearing officer proceeded on a theory that the Board's submissions raised the issue, allowing the taxpayer to submit rebuttal evidence. The argument also assumes that PTAB is empowered under its statutory mandate to address issues never before raised. This view overlooks PTAB's own rules and the inois Administrative Review Law (735 LLCS 5/3-101 et seq. (West 2000)).

The taxpayer, as a contesting party, bears the burden to submit substantive evidence to establish a lack of uniformity. 86 Ill. Adni. Code 1910.63(b) (Conway Greene CD-ROM 2002). The burden of proof does not shift unless and until the taxpayer meets its burden of going forward with substantive evidence. 86111. Adni. Code 19 10.63(c) (Conway Greene CD-ROM 2002). Nor can the sales ratio studies qualify as rebuttal evidence as suggested by the PTAB hearing officer. 86111. Adm. Code 1910.66(b) (Conway Greene CD-ROM .2002) (rebuttal evidence shall not consist of new evidence and a party is precluded from submitting its case in chief under the guise of rebuttal evidence).

We addressed procedurally similar facts in Bosch. Bosch was a consolidated appeal in which we reviewed PTAB orders in eight tax appeals. Bosch 339 III App. 3d at 533. An issue in Bosch was PTAB's authority, if any, to deviate from assessment levels set out in the Cook County ordinance to remedy a uniformity challenge based on an interpretation of sales ratio studies generated by the Department of Revenue (the Department). We held that we could not reach this issue because the taxpayers in six of the eight cases had not timely raised it. We found that, although timely raised in two cases, the evidence was insufficient to allow appellate review. Bosch. 339 Ill App. 3d at 534. Our analysis in Bosch applies with equal force here, where uniformity was not raised by the taxpayer:

> "The Board's submission of a report did not alter the nature of the claim in the six cases before PTAB where the taxpayers challenged only the fair market value assigned. There is evidence in the record that the Board was aware of PTAB's 'procedures,' but that knowledge, and the Board's tender of evidence in 'anticipation' of PTAB's action, cannot invest PTAB with the power to supplement the record with evidence never introduced

by the taxpayers and grant relief the taxpayers never sought." Bosch. 339 Ill App. 3d at 539.

As in Bosch, the Board's submissions here could not enlarge the taxpayer's appeal to PTAB beyond the issue of f~ir market valuation originally challenged. See, e.g., People ex rel Vuagniaux v. City of Edwardsville. 254111. App. 3d 407, 672 N.E.2d 40(1996) (appellate review limited to consideration of the errors raised by the property owner, where the city was not awarded by the trial court all that it sought and did not file a cross-appeal regarding those issues on which it did not prevail).

Nor does PTAB's proclaimed "routine" use of sales ratio studies authorize use of the studies here when the issue is not raised and supporting evidence is not submitted by the party bearing the burden of proof. We rejected this argument in Bosch and noted that an agency's routine practice of using certain evidence in reaching its decision does not eliminate the requirement that the evidence relied on be introduced by the party bearing the burden of proof Bosch 339 III App. 3d at 539, citing Commonwealth Edison Co. v. Property Tax Appeal Board 115 III. App. 3d 371, 379, 450 N.E.2d 780 (1983).

Our decision in Bosch also rejected PTAB's arguments relating to its authority to take judicial notice of sales ratio studies. See Bosch. 339 Ill App. 3d at 541 (courts may not take judicial notice of sales ratio studies which represent critical evidentiary material that goes to the heart of a contested issue); Bosch. 339 LII App. 3d at 541 (sales ratio studies are not within PTAB's specialized knowledge or expertise). Nor does PTAB's reliance on its legislative mandate to establish an "informal procedure" and "eliminate formal rules of pleading, practice and evidence" (35 ILCS 200/16-180(2000)) allow PTAB to take judicial notice of evidentiary material not submitted by the party bearing the burden. PTAB contends, without citation to authority

other than its own practices, that its "routine" use of sales ratio studies implements the informal procedure contemplated by section 16-180 of the Property Tax Code (Code) (35 ILCS 200/16-180 (West 2000)). We disagree.

PTAB stresses that its rules allow consideration of sales ratio studies in residential appeals. 86111. Adm. Code 1910.50(c)(2) (Conway Greene CD-ROM 2002). PTAB maintains that the routine practice of taking judicial notice of sales ratio studies promotes consistency and fairness. PTAB also states in its brief that unrepresented taxpayers, both residential and commercial, may not be aware of the sales ratio studies or their significance and should have the benefit of their use. Setting aside a troublesome impression left by this argument—that PTAB is invested with an advocacy role for the taxpayer as part of its mandate—"routine practices" unchallenged in residential cases cannot be elevated to precedent in the appellate court where they have been challenged.

The argument also does not address an observation made in Bosch: that PTAB continues to operate as if an objection by the Joint Committee on Admistrative Rules (JCAR) to a proposed PTAB rule-a rule that did not distinguish between residential and commercial appeals-had not been made. It was clear from the administrative record that PTAB amended its proposed rule to address JCAR's objections. Bosch. 339 III App. 3d at 545.

We must conclude that neither principles of administrative review nor PTAB's own rules grant PTAB the authority to do what it did here-remedy an alleged uniformity violation never raised by the taxpayer in the original appeal before the Board or the proceedings before PTAB.We are not persuaded that an argument proposed by an amicus that section 8-40 of the Code (35 ILCS 200/8-40 (West 2000)) must alter our analysis of this case.

Section 8-40 incorporates the Code to implement review of final administrative decisions of the Department of Revenue. 35 ILCS 200/8-40 (West 2000). Final administrative decisions by the Department include assessment ratios and percentages promulgated for equalization purposes. See 35 ILCS 200/17-5 through 17-30 (West 2000). Amicus concludes from its reading of this section of the Code that sales ratio studies must be challenged, if at all, under administrative review when first promulgated. Absent an administrative review, the studies represent final binding decisions of an agency which must be accepted in subsequent litigation without challenge. We disagree.

Amicus overlooks that the Department's equalization factor is a legislative function to which different due process requirements apply. Advanced Systems. Inc. v. Johnson. 126111. 2d 484, 506, 535 N.E.2d 797 (1989). The hearing and review contemplated in section 8-40 is an information gathering forum in pursuit of legislative facts and not a "contested case" as that term is defined in the Illinois Administrative Procedure Act (5 ILCS 100/1-30 (West 2000)). Advanced Systems 126111. 2d at 506. The absence of a "contested case" makes inapplicable the "[t]rial-type procedures, including the taking of evidence subject to cross-examination," required in a contested case where individual legal rights, duties or privileges are at issue. Advanced Systems. 126111. 2d at 506; 5 ILCS 100/1-30 (West 2000). We do not believe that sales ratio studies, adopted in a legislative proceeding, must be accepted without challenge in a subsequent contested case, at the heart of which is the right to cross-examination.

The amicus argument also does not address the distinction between assessment and equalization. Assessment is the process of assigning value for tax purposes to individual parcels by the local assessment officials. In re Application of Cook County Collector. 133 LII. App. 3d 208, 211, 478

N.E.2d 1119 (1985). Equalization is a statutorily mandated function by which the Department adjusts the aggregate assessed valuations of property in each county so that in every county the ratio of aggregate assessed valuations to fair cash value is 100%. Johnson, 133 Ill. App. 3d at 211. Equalization was not intended to adjust individual assessments. Johnson. 133 LII. App. 3d at 211. The Department's equalization function is not intended to be applied to achieve both a statewide balance and to adjust individual assessments. Our supreme court has addressed an analagous issue in a procedurally similar context involving standards promulgated by the illinois Pollution Control Board.

In Granite City Division of National Steel Co. v. illinois Pollution Control Board 155111.24 149, 613 N.E.2d 719 (1993), the distinction between standards promulgated by an administrative agency and the "calculated criterion" used to set those standards is clarified:

> "'Once a standard has been established by Board regulations, and it has withstood any appeals, the validity of that number itself cannot be subsequently challenged in a contested case setting. However, an Agency calculated criterion can. Because criteria numbers will be generated without the benefit of statewide public participation, and because application *** necessarily require[s] the use of assumptions and professional judgment about which reasonable experts may disagree, the validity and correctness of application of a criterion must be reviewable by the Board on a case-by-case basis when the criterion is applied to a particular situation. ***' Board Order, at 30." Granite City 155 III. 2d at 176.

We believe the distinction drawn in Granite City is persuasive when we consider a statewide equalization factor on the one hand and the sales ratio studies that

underpin that factor on the other. The distinction is in accord with those drawn in cases such as Airev v. Department 116 Ill. 2d 528, 537-38, 508 N.E.2d 1058 (1987), and Advanced Systems. Inc. v. Johnson. 126111. 2d 484,496, 535 N.E.2d 797 (1989), on the one hand, and a contested case In re Application of Rosewelt 106111. 2d 311,478 N.E.2d 343 (1985), on the other.

We conclude that the taxpayer here did not timely raise a uniformity challenge so as to justify the relief granted. We remand with directions to PTAB to apply the 38% level of assessment contained in the Cook County ordinance. We need not consider PTAB's use of sales ratio studies as authority to deviate from the Cook County ordinance or PTAB's reading of the 2½: 1 constitutional ratio limitation in light of our conclusion.

Reversed and remanded with directions.

GREIMAN and McBRIDE, JJ., concur.

No: 1-01-3232

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

COOK COUNTY BOARD OF REVIEW,	)	Petition for Review of a Decision of the Property Tax Appeal Board
Petitioner,	)	
V.	)	
ILLINOIS PROPERTY TAX APPEAL BOARD, an administrative agency created by 35 1LCS 20017-5, and THE LURLE COMPANY, (33 N. LaSalle, Chicago), taxpayer,	)	PTAB Docket Nos 97-24242-C-3 and 98-26195-C-3
Respondents.	)	

ILLINOIS PROPERTY TAX APPEAL BOARD'S AFFIDAVIT OF INTENT TO SEEK REVIEW IN THE ILLINOIS SUPREME COURT STATE OF ILLiNOIS

COUNTY OF COOK)
) SS.
)

PATRICK C. DOODY, being first duly sworn, deposes and states as follows:

1. I am one of the Attorneys responsible for representing The Lurie Company in the above captioned appeal.

2. I have been requested by The Lurie Company, and intend in good faith, to seek review by the Supreme Court of the Appellate Court's decision of December 16, 2003.

SUBSCRIBED and SWORN to before me
January, 2004.

/s/NOTARY PUBLIC

STATE OF ILLINOIS)
) SS.
COUNTY OF C00K)

PROOF OF SERVICE

The undersigned, being first duly sworn upon oath, deposes and states that copies of the foregoing Affidavit of Intent to File a Petition for Leave to Appeal were served upon the below-named parties on January 6,2004, by depositing such copies in the United States mail at 100 West Randolph Street, Chicago, illinois, before 5:00 p.m. m envelopes bearing sufficient postage.

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SUBSCRIBED and SWORN to before me
6th day of January, 2004.

/s/NOTARY PUBLIC

No.

IN THE
SUPREME COURT OF ILLINOIS

COOK COUNTY BOARD OF REVIEW,	)
	) Petition for Leave to
	) Appeal from the
Petitioner,	) Appellate Court of
V.	) Illinois, First Judicial
	) District, No 1-01-3232
	)
ILLINOIS PROPERTY TAX APPEALBOARD, an administrative agency createdby 35 ILCS 200/7-5, and THE LURIECOMPANY, (33 N. LaSalle, Chicago),taxpayer,	) There Heard on a
	) Petition for Review of a
	) Decision of the Property
	) Tax Appeal Board
	)
	) FTAB Docket Nos.
Respondents.	) 97-24242-C-3 and
	) 98-26195-C-3

PETITION FOR LEAVE TO APPEAL OF THE ILLINOIS PROPERTY TAX APPEAL BOARD

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PRAYER FOR LEAVE TO APPEAL

Pursuant to Supreme Court Rule 315, the illinois Property Tax Appeal Board (PTAB) respectfully requests that it be granted leave to appeal from the December 16, 2003 decision of the illinois Appellate Court, First District[1]. This case presents important questions of first impression involving real estate property taxes.

The decision below is only the third issued by the First District to review a PTAB decision.[2]Just as it did in its first such decision, Cook County Board of Review v. Property Tax Appeal Board and Bosch, 339111. App. 3d 529, 791 N.E.2d 8 (2002), appeal denied, __ Ill. 2d __ (Oct. 7, 2003, Table No. 96760), the First District significantly misapprehended the statutory scheme of the Property Tax Code, 35]ILES 200/16-160 et. seq., (the Code) in holding that the PTAB lacked the power to consider issues that a taxpayer had not previously raised at the Cook County Board of Review (Board of Review). (Slip Op. at 1) The First District also erroneously held that (1) the taxpayer did not adequately raise the issue of whether the Illinois Constitution requires the PTAB to apply a level of assessment to commercial property which is not more than 2½ times the defacto level applied to residential property (the 2½ times issue), and (2) the PTAB could not take official notice of the

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[1] The taxpayer, the Lurie Company, is also is filing a petition for leave to appeal.

[2] The First District has just begun reviewing PTAB decisions because Cook County taxpayers were first allowed to file appeals with the PTAB in 1996 for residential property and in 1997 for non-residential property.

The First District's second decision reviewing a PTAB decision, Cook County Board of Review v. PTAB and Sears, 334 111. App. 3d 56, 777 N.E.2d 622 (lst Dist. 2002), unlike the first and third such decisions, does not hold that the PTAB is limited to addressing issues raised at the Board of Review or, as the First District held in Bosch, merely reviewing the record of the Board of Review.

sales ratio studies prepared by the Illinois Department of Revenue (the Department) for purposes of determining the correct level of assessment. (Slip Op. at 6) The First District's decision is contrary to the language of the Code, constricts the power vested in the PTAB by the General Assembly, and foists a new burden on the Board of Review to become a body of record.

The First District's decision also creates a conflict among the districts, as it is inconsistent with LaSalle Partners, Inc. v. Property Tax Appeal Board, 269 Ill. App. 3d 621, 646 N.E.2d 935 (2nd Dist. 1995), which recognized the PTAB's power and duty to address issues that were not necessarily raised before the county board of review. Thus, as a result of the conflicting First District's decision, the PTAB, a state agency, is placed in the untenable position of being able to address all issues in most counties, but in Cook County being able to address only issues raised at the Board of Review — if the PTAB is even able to determine which issues were raised at the Board of Review, given that the Board does not prepare a record of its proceedings. Alternatively, if the First District's decision is construed as not creating a clear conflict — and, thus, is deemed controlling authority statewide — the decision will affect virtually all real estate property cases presented to the PTAB and to all 102 county boards of review.

The First District also arrived at other erroneous conclusions, including that the taxpayer did not adequately raise at the PTAB the "2'/2 times issue" and that the PTAB was barred from taking official notice of the Department of Revenue's sales ratio studies. These rulings also create conflicts with other appellate districts which have acknowledged the PTAB's ability to address issues not raised by the parties in order to arrive at a correct assessment and the PTAB 's authority to take official notice of the Department's sales ratio studies. The First District's ruling will effectively prevent most Cook County non-residential taxpayers

from receiving a constitutional assessment because these taxpayers, unlike Cook County residential taxpayers and all downstate taxpayers, will be unable to rely on the PTAB to take official notice of theDepartment's sales ratio studies, but rather will have to bear the expense of calling expert witnesses to establish the validity of the studies.

For these reasons, this Court should grant leave to appeal and reverse the First District'serroneous decision which is inconsistent with the Code and with decisions of other appellate districts, and which also raises issues of general importance requiring this Court's attention. The PTAB asks that this Court not only address whether the First District's decision was correct, but also reach the issue which the First District declined to confront: whether illinois' Constitution requires the PTAB to apply a level of assessment to commercial property which is not more than 2½ times the level applied to residential property.

DECISION OF THE APPELLATE COURT

On December 16, 2003, the appellate court entered an opinion reversing and remanding the PTAB's decision. (See Slip Op. in Appendix at 1) The PTAB filed an affidavit of intent to seek leave to appeal on January 6, 2004. (Appendix at 11)

POINTS RELIED ON FOR REVERSAL

When the First District held that the PTAB's hearings and decisions were limited to addressing issues raised before the Cook County Board of Review, the court ignored provisions of the Code and the PTAB rules, failed to follow decisions of other appellate districts, and mandated a change in the manner in which property tax cases have been handled before the PTAB and boards of review for decades.

When the First District held that the 2'/2 times issue was not properly raised at the PTAB and that the PTAB could not take official notice of the Department's sales ratio studies, it again ignored provisions of the Code and PTAB rules, failed to follow the decisions of other appellate districts, and effectively denied most Cook County non-residential taxpayers the level of assessment they are guaranteed by the Constitution.

STATEMENT OF FACTS

The Proceedings Before the PTAB

The Lurie Company (Lurie) filed real estate tax assessment appeals with the PTAB for the years 1997 and 1998 for an office building located at 221 N. LaSalle Street in Chicago, Illinois (the "subject property"). Vol. I, R.C2; Vol. I, R.C58. For both years, Lurie asked that the assessed value of the subject property set by the Board of Review be reduced to $4,636,000. Id. Lurie submitted two appraisals as evidence. Vol. III, Exhibits.

The Board of Review submitted its evidence of the property's market value, plus (I) a copy of the Cook County Real Property Assessment Classification Ordinance ("the Ordinance"), (2) case law relating to the use of the Department's sales ratio studies, (3) a report that critiqued the Department's annual sales ratio studies, and (4) a copy of the International Association of Assessing Officers' "Review of the Assessment Sales Ratio Study Program for the Illinois Department of Revenue." Vols. 1V and V, Exhibits.

In rebuttal to the Board of Review's submissions, Lurie asked the PTAB to take official notice of the Department of Revenue's annual sales ratio studies for Cook County. Vol. I, R.C28. Lurie submitted copies of the studies for 1992. 1993, 1994, and 1995, and asked that the PTAB take notice of any sales ratio studies completed subsequent to 1995.

Vol. I, R.C28; Vol.V, Exhibits. On March 17, 1999, the PTAB sent copies of Lurie's rebuttal material to the Board of Review. Vol. I, R.C30.

Six months later, on September 14,2000, Lune again asked the PTAB to take official notice of the Department's sales ratio studies, and that the studies indicated that the median level of assessment for "Class 2— Residential Property" was 10%. Vol. I, R.C55. Lurie argued that the subject property, which is "Class 5— Commercial Property," could be assessed at no more than 25% because Section 4 of Article IX of the Illinois Constitution provides that no class of property shall be assessed at a level more than 2½ times that of another. Id. Lurie sent a copy of this request to the Board of Review. Id.

Department forms calculating the 1997 and 1998 assessment ratios for Cook County were also made a part of the PTAB record. Vol. I, R.C135-36. These documents show that the three-year median level of assessment for Class 2 property actually was 10.09% for 1997 and 10.08% for 1998, even though the Ordinance required a 16% level of assessment for Class 2. Id.

At a hearing held on September 20, 2000, Lurie once again asked the PTAB to take official notice of the Department's sales ratio studies. Vol. II, R.8. Lurie also asked the PTAB to consider the constitutional requirement that the difference between the level of assessment of the highest and lowest classes of property be no more than 2'/2 to 1. Id. Lurie noted that the sales ratio studies showed that, in practice, the Cook County Assessor had assessed Class 2 property at about 10% of its market value for quite some time. Id. Therefore, Lurie asked for a level of assessment of no more than 2½ times 10%, or a maximum level of assessment of 25%. Id.

The Board of Review objected to the PTAB's taking official notice of the Department's studies, arguing that it

did not have enough notice of the request. Vol. II, R. 10-11. However, the hearing officer found that the Board of Review itself submitted voluminous materials relating to the sales ratio studies and that Lurie's rebuttal regarding the sales ratio studies was timely. Vol.[3] II, R.15-16. The Board of Review again objected that the constitutional issue had not been timely raised and asked for a continuance of the hearing or, in the alternative, for an opportunity to submit additional case law on the issue. Vol. II, R. 19. The hearing officer stated that the parties would be allowed to file post-hearing briefs. Id. The hearing officer found that the Board of Review itself had submitted documentation regarding the Department's sales ratio studies and that PTAB Rule 1910.66 provided that rebuttal evidence could consist of documentary evidence submitted "to explain, repel, counteract or disprove fact given in evidence by an adverse party." 86. III. Admin. Code § 1910.66. The hearing officer denied the Board of Review's motion to strike the rebuttal evidence, finding that it was disingenuous for it to ask to exclude Lurie's rebuttal evidence on an issue the Board of Review itself raised. Vol. II, R.28.

In its closing brief, Lurie argued that in assessing its property, Cook County not only violated the county's own classification ordinance, but also Article D(of the Illinois Constitution which prohibits any class of property from being assessed at a level which is more than 2½ times that of another. Vol. I, R.Cl 19-20. Lurie noted that it was undisputed that the lowest class of property in Cook County

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[3] The hearing officer declined to take official notice of the sales ratio studies at that time because it appeared that the parties had already put them into evidence. Vol. II, R. 15-16. Later, the PTAB would take official notice of the final three-year average median level of assessment calculated by the Department for 1997 and 1998. R.C161 This specific information was not actually submitted by Lurie.

(Class 2— Residential) had been assessed at about 10% of market value for at least ten years, according to the Department's sales ratio studies. Id. Lurie argued that PTAB Rule 1910.50(c)(2), 86 Ill. Admin. Code § 1910.50(c)(2), requires the PTAB to apply the median level of assessment, as calculated in the Department's studies, to Class 2 residential properties. Lurie pointed out that this rule had been upheld by the Circuit Court of Cook County in Cook County Board of Appeals v. Property Tax Appeal Board and Glen Leflcowitz, Gen. No.98 CoTab 0001 (1999), where the court upheld the PTAB's application of the median level of assessment of 10.04%, rather than the Ordinance level of 16%, to residential property. Vol. I, R.C 122. Lurie argued that, since the Illinois Constitution prohibits classifying assessing any class at a level more than 2'/2 times the level applied to another class, the level of assessment applied to Lurie's property could not exceed 25%. Id.

The Board of Review also filed a post-hearing brief arguing that (1) the PTAB should decline to take official notice of the sales ratio studies; (2) the PTAB should not substitute the median level of assessment indicated by the Department's sales ratio studies for the level of assessment required by the Ordinance; (3) the Constitution's 2V2 times limitation did not create a cause of action for review of an individual assessment; and (4) Lurie had failed to prove that the Board of Review's assessment of the subject property was incorrect. Vol. V, Exhibits.

The PTAB Decision

The PTAB found that the evidence established the market value of the subject property was $14,450,000 in

1997 and 1998.[4] Vol. I, R.C153-54. The PTAB then addressed the 2'/2 times limitation issue raised by the parties. Id. The PTAB observed that in any county which has elected to classify property, the Illinois Constitution requires that the level of assessment of the highest class in a county shall not exceed 21/2 times the level of assessment of the lowest class in that county. Id.

The PTAB also noted that, by law, the Department of Revenue must annually compute an equalization factor for each county. R.C1 56 One factor used in the calculation of the equalization factor is the median level of assessment, which is derived from the Department's annual sales ratio studies. Id. In Cook County, the Department must compute the median level property, was not at issue in the appeal below. of assessment for each of the various classes of property. Id. These studies are pursuant to the Code, which directs the Department to "monitor the quality of local by designing and preparing sales ratio studies." 35 JILTS 200/17-10 (2000). R.C156. The PTAB explained that the data relied upon by the Department comes from real estate transfer declarations. Id. The studies compare assessed valuations to actual sales prices to determine the percentage relationship between the assessed values and actual market values. Id.

The PTAB concluded that the level of assessment for the highest class must not exceed 2'/2 times the level of assessment for the lowest class as determined by the defacto levels of assessment and not by the Ordinance levels. R.C 159. Next, the PTAB acknowledged that courts have found the Department's sales ratio studies to be reliable indicators of the defacto levels of assessment, and concluded that the studies could be considered prima facie evidence of the

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[4] This part of the PTAB's decision, which determines the market value of the subject

defacto levels. R.C161. The PTAB noted that it systematically uses the sales ratio studies' results to determine the defacto median levels of assessment for properties located outside of Cook County, and found that it should do so in Cook County, too. Id. Finally, the PTAB observed that it may take official notice of the results of the Department's 1997 and 1998 sales ratio studies for Cook County. These studies showed that the median level of assessment for Cook County Class 2— Residential Property was 10.09% for 1997 and 10.08% for 1998. Id.

The PTAB ruled that since the subject property was clearly assessed at a level in excess of 2'/2 times the defacto residential levels of 10.09% and 10.08% for 1997 and 1998, reductions in the subject property's assessments were warranted. R.C163 Accordingly, the PTAB applied to the property's market value a 25.23% level of assessment for 1997 and a 25.20% level for 1998. Id. The subject property's assessment was thereby reduced to $3,645,735 for 1997 and to $3,641,400 for 1998. Id. The Board of Review filed a petition for review.

The Appellate Court's Decision

Even though no party raised the issue, the First District characterized the "main question" on appeal as being "whether PTAB has the authority to expand the scope of a taxpayer's appeal to include issues never raised by the taxpayer before the Cook County Board of Review." (Slip Op. at 1) The First District answered its own question in the negative, finding that "the scope of the PTAB's review and the relief it may grant is limited to the relief sought by a taxpayer before the Board." Id. Because, as in all of its cases, the Board of Review made no record of its proceedings, there was no record of what issues Lurie raised before the Board of Review. Nonetheless, the First District found that there was no dispute that the taxpayer did not raise a

"uniformity" claim before the Board of Review. (Slip Op. at 2) Therefore, the First District held that the 2½ times limitation — a constitutional issue — could not be raised at the PTAB because it had not been raised at the Board of Review. (Slip Op. at 2)

The First District reversed the decision of the PTAB and remanded with directions to apply the 38% level of assessment required by the Ordinance. Id. In the rest of its opinion, which it characterized as "partly dicta," the First District relied heavily on its decision in Cook County Board of Review v. PTAB and Bosch, 339 Ill. App. 3d 529, 791 N.E.2d 8 (2002) (Bosch), to find that Lurie did not timely raise the issue of uniformity and that the PTAB could not take official notice of the sales ratio studies. (Slip Op. at 4, 6)

ARGUMENT

I. The First District Erred in Holding That the PTAB Could Address Only Issues Which Had Been Raised at the Board of Review.

A. The Property Tax Code Requires the PTAB to Conduct De Novo Hearings,Where the PTAB May Address Issues Not Raised at the Board of Review.

PTAB's enabling legislation in no way restricts it to considering only issues raised before a local board of review. 35 ILES 200/16-160 et. seq. (2002). Section 16-180 provides that all appeals to the PTAB "shall be considered de novo." 35 ILES 200/16-185 (2002). Section 16-170 of the Code, entitled "Hearings," states that the PTAB "may require the production of any books, records, papers or documents that may be material or relevant as evidence in any matter pending before it and necessary for the making of a just decision." Id. (emphasis added) Nothing in the

statutory language limits the PTAB to considering only evidence that is relevant to an issue which the appealing party raised before a local board of review.

In fact, in three instances, where the taxpayer may appeal directly to the PTAB and bypass the board of review altogether, it would be impossible for the PTAB to limit itself to considering issues raised at a previous board of review hearing. A taxpayer may bring a case directly to the PTAB: (1) if the sole basis for the appeal is the effect of an equalizing factor, 35 ILES 200/16-180 (2002); (2) if the PTAB renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the board of review, 35 ILES 200/16-185 (2002); or (3) if such a decision is rendered after adjournment of the session of the board of review at which assessments for the subsequent year are being considered. 35 LCS 200/16-185 (2002). See Villa Retirement Apartments, Inc. v. Property Tax Appeal Board, 302 Ill. App. 3d 745, 752, 706 N.E.2d 76, 81 (4th Dist. 1999); Cotter and Company v. Property Tax Appeal Board, 277 Ill. App. 3d 538, 544-45, 660 N.E.2d 1283, 1286-87 (2"" Dist. 1995). Thus, the PTAB must be able to consider new issues in these types of cases, and there is no logical reason for prohibiting the PTAB's consideration of new issues in other types of cases.

The PTAB has interpreted its enabling statute as requiring it to conduct de novo hearings at which it will consider issues that were not necessarily raised at the board of review. The PTAB rules clarify the meaning of de novo as it relates to its proceedings: "All proceedings before the Property Tax Appeal Board shall be considered de novo which shall mean that the Property Tax Appeal Board will consider only the evidence, exhibits and briefs submitted to it, and will not give any weight or consideration to any prior actions by a local board of review or to any submissions not timely filed or not specifically made a part of the record." 86 Ill. Admin. Code § 1910.50(a). The PTAB has

conducted de novo hearings in Cook County for several years (since its jurisdiction was expanded to include Cook County) and in all other counties of Illinois for decades. The PTAB's long-standing interpretation of its enabling statute as allowing it to address all issues raised by the parties is entitled to deference. Illinois Consolidated Telephone Company v. illinois Commerce Commission, 95 Ill. 2d 142, 152, 447 N.E.2d 295, 300 (1983).

B. The First District's Decision Conflicts with a Decision of the Second District.

In LaSalle Partners, Inc. v. Property Tax Appeal Board, 269 Ill. App. 3d 621,646 N.E.2d 935 (2"" Dist. 1995), the Second District held that because the Code directs the PTAB to determine the "correct assessment" of the property at issue, 35 1LCS 200/16-180, the PTAB "must be able to independently evaluate the evidence, unhindered by the conclusions of the board of review below." 269111. App. 3d at 628, 646 N.E.2d at 939. Writing with approval of the PTAB's interpretation, the appellate court held:

> Under the scheme created by the PTAB statute, an appeal to the PTAB does not afford taxpayers the right to request that a higher authority rule upon the correctness of a lower authority's findings. Rather it affords taxpayers and taxing bodies "a second bite at the apple," i.e. an opportunity to have assessments recompute by a reviewing authority whose power is not circumscribed by any previous assessment.

269 Ill. App. 3d at 629, 646 N.E.2d at 940. Hence, the Second District has clearly concluded that the PTAB is not limited to considering only issues addressed by the board of review.

Therefore, a clear conflict exists between the decisions of the First and Second Districts that requires a resolution by

this Court. The First District's decision is wrong and should be reversed.

C. The First District's Decision Would Deprive Taxpayers, Taxing Bodies and Boards of Review of Their Statutory Rights to Raise New Issues and Would Create an Untenable Burden on Boards of Review.

If, as a result of the First District's decision, the PTAB is forced to cease considering issues not raised before the Board of Review, the statutory and constitutional rights of all parties appearing before it will be seriously compromised. As shown above, taxpayers have the statutory right to raise new issues before the PTAB. The First District's decision would deprive them of that right, and force taxpayers to raise all possible issues, constitutional or otherwise, before the Board of Review, which normally conducts only informal hearings.

Taxing bodies also would be deprived of their right to effectively intervene in PTAB cases. The Code requires that in all cases where a change in assessed valuation of $100,000 or more is sought, all taxing districts that would be affected by the change must be notified. 35 LCS 200/16-180 (2002). However, such notification would be useless if these taxing bodies were then prohibited from raising any issues that the taxpayer had not already raised. Under the First District's view, neither the Board of Review nor an intervening taxing body could request any relief from the PTAB that was not requested in the taxpayer's petition. Since taxpayers are unlikely to ask that the PTAB raise their assessment, this would lead to the conclusion that the PTAB could never raise an assessment when a taxpayer files an appeal with the PTAB. However, this conclusion is directly contrary to the Second District's holding in LaSalle Partners, Inc., 269 Ill. App. 3d at 628, 646 N.E.2d at 939.

In many PTAB cases, there are no interveners, which leaves the Board of Review as the only entity appearing before the PTAB in opposition to the taxpayer's request for a reduced assessment. If the PTAB cannot address new issues, the Board of Review would have no opportunity to raise any issue not already raised by the taxpayer. Hence, if the First District's decision is not reversed, it will seriously compromise the rights of taxpayers, taxing bodies and the Board of Review.

Finally, there is no mechanism for making a record of issues that were raised by parties at Board of Review hearings. This Court has previously recognized the impracticality of considering boards of review to be bodies of record. In People ex ret. Devine v. Murphy, 181111. 2d 522, 693 N.E.2d 349 (1998), when reviewing circuit court judgments holding a tax objection provision of the Code unconstitutional, this Court stated:

> [R]ecord review of property tax assessments may not be feasible. As petitioner argues: "[B]oards of appeals and review in Illinois are not presently bodies of record. To make them so given the pressures of the annual tax cycle would be impossible (e.g., the Cook County Board of Appeals hears from 60,000 to 90,000 complaints per year). . .. [R]ecord review of the board of appeals is thus wholly impractical, and it was properly rejected as an alternative by the General Assembly."

181 Ill. 2d at 536 n.2, 693 N.E.2d at 356 n.2. This Court now should grant review to make clear that boards of review are not bodies of record and that to limit the PTAB to addressing only issues raised at the board of review is contrary to law and wholly impractical.

II. The First District Misapprehended the Law When It Determined That the 21,4 Times Issue Was Not Properly Raised and That the PTAB Was Not Authorized to Take Official Notice of the Department's Sales Ratio Studies.

Because the First District misapprehended the power of the PTAB to address new issues, it also arrived at other erroneous conclusions.

A. The 21/2 Times Issue Was Properly Raised Before the PTAB.

As outlined in the Statement of Facts above, Lurie promptly and repeatedly raised the 2'/2 times issue, and the PTAB gave the Board of Review multiple opportunities to respond to Lurie's claims. Vol. I, R.C30; Vol. II, R.15-16, R.C 19, R.C28. Because the PTAB is charged with basing its decisions on "equity and the weight of the evidence," 35 ILES 200/16-185 (2000), the PTAB is not limited to granting only the relief requested on the initial appeal form. This is not unlike the circuit court's ability to allow parties to amend their pleadings to conform to the evidence. 735 lCS 5/2-616 (2002). In LaSalle Partners, Inc., the PTAB, after reviewing all of the evidence submitted, actually raised the assessed value — something neither the taxpayer nor the board of review requested in their original pleadings filed with the PTAB. 269 III. App. 3d at 628-29, 646 N.E.2d at 940. The Second District approved of this action, holding that the PTAB was not limited to granting the relief requested by the taxpayer on its original appeal form. Id.

Hence, in this action, Lurie was not barred from amending its request for relief. Lurie could change its prayer for relief to include a request for a level of assessment that was no more than 2'/2 times the level applied to residential property. Lurie did make such a claim, and the Board of

Review was given ample opportunity to respond to this claim both before and after the PTAB hearing. Vol. I, R.C30; Vol.11, R.15-16, R.C19, R.C28.

When the First District ruled that the PTAB could not enlarge the issues beyond what the taxpayer originally raised in its complaint, the First District relied on People ex rel. Vuagniaux v. City of Edwardsville, 284 111. App. 3d 407, 672 N.E.2d 40 (5k" Dist. 1996). (Slip Op. at 6) There, the court noted that "[o]rdinarily, when an appellee does not file a cross-appeal, the reviewing court will be confined to the issues presented by the appellant and will not consider issues presented by the appellee, except to the extent that they are related to the appellant's issues." 284 Ill. App. 3d at 415, 672 N.E.2d at 46. The First District's reliance on this language illustrates its misapprehension of the PTAB as being similar to an appellate court, which merely reviews the record of a lower body. As explained by the Second District in LaSalle Partners, Inc., the analogy is inapt. The PTAB holds its own hearing and creates its own record.

Further, in every appeal, the constitutional 2 '/2 times issue is implicitly before the PTAB. In a market value claim presented to the PTAB, a taxpayer must submit evidence of the property's market value. 86 111. Admin. Code § 1910.63. Upon determining the correct market value, the PTAB then applies the proper level of assessment, which may be determined by reference to the Department's sales ratio studies. 86 III. Admin. Code § 1910.50(c). Because the PTAB's rules and practice alert parties that the PTAB will apply either the Department's sales ratio studies, or whatever assessment level is necessary to comply with the Illinois Constitution, a party that does not want the PTAB to apply the median level of assessment must object.

In the Fourth District's recent decision in Peacock v. illinois Property Tax Appeal Bd., 339 III. App. 3d 1060,

1071, 792 N.E.2d367, 375 (4~" Dist. 2003), the plaintiffs objected to the PTAB's consideration of the Department's sales ratio studies. However, the Fourth District ruled that the plaintiffs forfeited this matter because they had not objected at the PTAB or in the circuit court to the PTAB's use of the sales ratio studies. Id. Thus, Peacock supports the PTAB's position that if the Board of Review did not want the PTAB to use the Department's sales ratio studies, it was incumbent upon the Board of Review to object at the PTAB hearing. But if the First District's decision is allowed to stand, the responsibility to raise this issue would be shifted to taxpayers who appeal to the PTAB, many of whom are prose and unfamiliar with real estate tax law. These taxpayers would be required to actively request that the PTAB apply a level of assessment that does not exceed the constitutional maximum. If commercial taxpayers fail to raise this issue on their appeal fonn, the First District would hold that they must be assigned the Ordinance level of assessment — which is more than 2½ times the defacto residential level of assessment and therefore, violates the Constitution's 2½ times provision.

B. The First District's Decision Prohibiting the PTAB from Taking OfficialNotice of the Department's Sales Ratio Studies Conflicts with Decisions of Other Districts of the Illinois Appellate Court And Is of General Importance.

Under its rules, the PTAB may take official notice of the Department's sales ratio studies as either a matter that is "within its specialized knowledge and expertise" or as a matter "of which the Circuit Courts of this State may take judicial notice." 86 Ill. Admin. Code § 1910.90(i). The PTAB rules also permit it to rely on evidence establishing the applicable level of assessment "under the Constitution." 86111. Admin. Code §1910.50(c)(3). In addition, the annual

sales ratio studies may be officially noticed because they are final administrative decisions of the Department of Revenue. 35 ILES 200/8-40 (2002); 735 1LCS 5/3-101(2002).

The First District's contrary decision not only is incorrect, but also creates a conflict among the appellate districts. In Commonwealth Edison Co. v. Property Tax Appeal Board, 124 Ill. App. 3d 228, 231, 463 N.E.2d 1331, 1334 (31(1 Dist. 1984), the Third District considered "whether it was error to apply the assessment level of 24.41% arrived at by Edison's expert in lieu of the 26.69% assessment level established by the PTAB." Even though it is apparent that no expert had testified on behalf of the PTAB's position that the Department's sales ratio studies should be used, the court held that the PTAB's decision was not against the manifest weight of the evidence. 124 Ill. App. 3d at 233, 463 N.E.2d at 1335. Again, in Will County Board of Review v. Property Tax Appeal Board, 100 Ill. App. 3d 506, 508, 426 N.E.2d 1238, 1239 (3rd Dist. 1981), though there was no mention of any expert testimony, the court found that the 29.57% level of assessment (which was supported by the Department's sales ratio studies) was at least "prima facie evidence" that the level of assessment of like property in Will County was lower than the 33½% figure used by the board of review for the subject property. Once more, in Lake County Board of Review v. Property Tax Appeal Board, 86111. App. 3d 553, 556, 407 N.E.2d 1022, 1024 (2"~' Dist. 1980), the Second District approved the PTAB's use of the Department's sales ratio studies to determine the correct level of assessment even though there was no expert testimony about the studies.

When the First District held that the PTAB could not take official notice of the sales ratio studies, it also failed to understand the difference between this case and Bosch. Bosch asked the PTAB to take official notice of sales ratio studies for commercial property, while Lurie asked the PTAB to take official notice of the sales ratio studies for

residential property. There exists a difference because in Lune's case the PTAB needed only to refer to the Department's residential sales ratio studies to determine the maximum constitutionally allowable level of assessment for commercial property (21A times the residential level). PTAB Rule 1920.50(c)(2) specifically empowers the PTAB to take official notice of the sales ratio studies for residential property, and neither the Board of Review nor the Joint Committee on Administrative Rules (JCAR) expressed any objection to this rule when it was promulgated. 86 Ill. Admin. Code § 1910.50(c)(2). The First District apparently misunderstood the rule to which JCAR objected, because the court stated that the rule "did not distinguish between residential and commercial appeals." This is not the case. Rule 191 O.50(c)(2) specifically allows the PTAB to rely on the Department's sales ratio studies for residential property, while Rule 191 0.50(c)(3), which applies to nonresidential property, does not specifically reference the sales ratio studies. 86 Ill. Admin. Code § 1910.50(c)(2), (3). JCAR did not object to the first rule of these two rules, only to the second, and the second rule was amended as suggested. 22 Ill. Reg. 11646.

In this action, only the residential sales ratio studies are relevant because the PTAB must multiply the residential level of assessment by 2'/2 to determine the maximum constitutional level. Thus, the residential median level of assessment is the only level of assessment that the PTAB need look at when computing the maximum allowable level of assessment under the 2'/2 times limitation. Hence, it was appropriate for the PTAB to refer to Rule 191 0.5 0(c)(2) when determining that it could consider the Department's sales ratio studies.

In Peacock, the Fourth District held that, since the PTAB rules specifically allowed the use of the Department's sales ratio studies, see 86 III. Admin. Code § 1910.50(c)(l), the PTAB was entitled to consider the Department of Revenue

figures," and that Bosch did not require a different result. 339 Ill. App. 3d at 1071, 792 N.E.2d at 375. Here, because Rule 1910.50(c)(2) specifically allows the PTAI3 to rely on the Department's sales ratio studies for Cook County residential property, the First District was wrong to hold otherwise.

Whether the PTAB may take official notice of the Department's sales ratio studies is an issue of general importance. If the First District's decision is not reversed, Cook County's non-residential taxpayers would be unable to rely on the PTAB to take official notice of the Department's studies and to apply a level of assessment which complies with the Constitution's 2'/2 times clause. Instead, these taxpayers would be forced to call expert witnesses to testify about the studies, or, more likely, would simply relinquish their right to a constitutional assessment.

CONCLUSION

For all of these reasons, the Illinois Property Tax Appeal Board prays that leave to appeal from the judgment of the appellate court be granted.

Respectfully submitted,

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APPENDIX

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No. 1-01-3232

THE COOK COUNTY BOARD OF REVIEW,	) Petition from the Property) Tax Appeal Board
Petitioner-Appellant,	)
V.	)
THE PROPERTY TAX APPEAL BOARD and THE LURIE COMPANY,	) 97-24242-C-3 and) 98-26195-C-3
Respondents-Appellees.	)

JUSTICE CAHILL delivered the opinion of the court:

We address a Cook County Board of Review (the Board) appeal challenging a decision by the Illinois Pro~ Tax Appeal Board (PTAB). The main question we consider is whether PTAB has the authority to expand the scope of a taxpayer's appeal to include issues never raised by the taxpayer before the Cook County Board of Review. In this case, PTAB ruled that responsive pleadings of the Board on appeal raised issues PTAB was empowered to address. We conclude that, under the Administrative Review Law (735 LCS 5/3-101 et seq. (West 2000)) and PTAB's own rules, the scope of PTAB's review and the relief it may grant is limited to the relief sought by a taxpayer before the Board. We reverse the order of PTAB applying a 25% level of assessment to the taxpayer's property and remand with directions to PTAB to apply the 38% level of assessment mandated by the Cook County Real Property Assessment Ordinance (Cook County ordinance) (Cook County Real

Property Assessment Classification Ordinance, Ord. No. 80-0-14 (amended November 6, 1997)).

The taxpayer, the Lurie Company, owner of commercial SA property, filed an appeal with PTAB following an unsuccessful appeal before the Board. PTAB entered an order adjusting the fair market value of the property to $14,450,000. PTAB then applied a 25% level of assessment instead of the 38% applied to commercial 5A property mandated by the Cook County ordinance. The Board did not appeal PTAB's reduction of the fair market value of the property. PTAB's deviation from the Cook County ordinance was based on PTAB's review of sales ratio studies purporting to establish an underassessment trend in Cook County residential property, and on PTAB's reading of the 2 1/2 :1 ratio limitation of the illinois Constitution (Ill. Const. 1970, art. IX §4(b)). This limitation prohibits the assessment level of the highest classification in a county from exceeding 2 ~/2 times the level applied to the lowest classification in that county.

It is undisputed that the taxpayer challenged before the Board only the fair market value assigned to its property. The taxpayer did not raise a uniformity claim before the Board based on a disparate assessment level. The Board's decision upheld the fair market value assigned by the assessor and applied the statutory 38% assessment level mandated by the Cook County ordinance. The taxpayer then appealed to PTAB, again challenging only the fair market valuation. The only materials the taxpayer submitted were appraisal reports supporting the taxpayer's claim that the fair market value of the property was less than that assigned by the assessor and affirmed by the Board.

We conclude as we did in Cook County Board of Review v. Property Tax Appeal Board 339111 App. 3d 529, 791 N.E.2d 8 (2002) (hereinafter Bosch), that the scope of PTAB's review should have been confined to a consideration

of the Board's fair market value determination. But as in Bosch. PTAB addressed and decided a new issue here. How that happened and our reasoning in rejecting PTAB's authority to do so is addressed in the balance of this opinion. Although we dispose of this appeal on the grounds that the contested issue of uniformity was not properly before PTAB, we address the arguments in support of PTAB's analysis of the uniformity issue. Our discussion of these issues is partly dicta within the context of this case. But we address the uniformity arguments because the discussion provides a context for our disposition of this appeal. We note that the discussion is based on our resolution of these issues in Bosch. where they were properly raised in two cases.

The Board's materials filed with PTAB included not only appraisal reports designed to rebut the taxpayer's fair market value evidence, but also a copy of the Cook County ordinance, case law relating to the use of sales ratio studies, a report critiquing the sales ratio studies, and a copy of the "Review of the Assessment Sales Ratio Study Program for the Illinois Department of Revenue" by the International Assessing Officers.

Based on the Board's submissions, the taxpayer then asked PTAB to take judicial notice of the sales ratio studies for the years 1992-95, copies of which the taxpayer then submitted. The taxpayer also asked PTAB to take judicial notice of "any official studies subsequent to 1995which have relevance to this appeal." The taxpayer conceded that it "did not make any claims to any particular assessment level or sales ratio study findings" in the initial appeal before the Board. But the taxpayer maintained before PTAB that the Board's submissions "have now placed the assessment level into controversy." The taxpayer also asked PTAB to take judicial notice of sales ratio studies for Class 2 residential properties. The taxpayer claimed that these studies established that residential property in Cook

County was assessed at 10%, rather than the 16% required by the Cook County ordinance. The taxpayer then reasoned that, based on this 10% level of assessment for residential property, commercial property could not constitutionally be assessed at more than 25% of the fair market value.

The taxpayer renewed its request that PTAB take judicial notice of the sales ratio studies at a hearing on September 20,2000. The Board objected, claiming that it had not been made aware of the taxpayer's request for judicial notice. The Board also objected because the sales ratio evidence was not certified.

The hearing officer declined to take judicial notice of the sales ratio studies. But, the hearing officer then ruled that the Board had placed uniformity at issue by its "voluminous" submission of documents relating to sales ratio studies. The hearing officer characterized the taxpayer's submission's as "rebuttal" evidence that "was timely submitted." The hearing officer then stated that the uniformity issue was now at issue and judicial notice was unnecessary. He said:

> "[Tihe issue of sales ratios has already been entered without a checkmark on the petition that's already an issue, which this Board [PTAB] will consider. This Board has accepted evidence by both parties on that issue; and, therefore, I see no need at this juncture to take judicial notice of it. It's an issue in evidence."

We reject at the outset PTAB's and the taxpayer's argument that the uniformity issue was timely raised. The hearing officer proceeded on a theory that the Board's submissions raised the issue, allowing the taxpayer to submit rebuttal evidence. The argument also assumes that PTAB is empowered under its statutory mandate to address issues never before raised. This view overlooks PTAB's own rules and the Illinois Administrative Review Law (735 LLCS 5/3-101 et seq. (West 2000)).

The taxpayer, as a contesting party, bears the burden to submit substantive evidence to establish a lack of uniformity. 86 Ill. Adm. Code 1910.63(b) (Conway Greene CD-ROM 2002). The burden of proof does not shift unless and until the taxpayer meets its burden of going forward with substantive evidence. 86111. Adm.. Code 1910.63(c) (Conway Greene CD-ROM 2002). Nor can the sales ratio studies qualify as rebuttal evidence as suggested by the PTAB hearing officer. 86111. Adm. Code 1910.66(b) (Conway Greene CD-ROM .2002) (rebuttal evidence shall not consist of new evidence and a party is precluded from submitting its case in chief under the guise of rebuttal evidence).

We addressed procedurally similar facts in Bosch. Bosch was a consolidated appeal in which we reviewed PTAB orders in eight tax appeals. Bosch 339 III App. 3d at 533. An issue in Bosch was PTAB's authority, if any, to deviate from assessment levels set out in the Cook County ordinance to remedy a uniformity challenge based on an interpretation of sales ratio studies generated by the Department of Revenue (the Department). We held that we could not reach this issue because the taxpayers in six of the eight cases had not timely raised it. We found that, although timely raised in two cases, the evidence was insufficient to allow appellate review. Bosch. 339 Ill App. 3d at 534. Our analysis in Bosch applies with equal force here, where uniformity was not raised by the taxpayer:

> "The Board's submission of a report did not alter the nature of the claim in the six cases before PTAB where the taxpayers challenged only the fair market value assigned. There is evidence in the record that the Board was aware of PTAB's 'procedures,' but that knowledge, and the Board's tender of evidence in 'anticipation' of PTAB's action, cannot invest PTAB with the power to supplement the record with evidence never introduced

by the taxpayers and grant relief the taxpayers never sought." Bosch. 339 Ill App. 3d at 539.

As in the Board's submissions here could not enlarge the taxpayer's appeal to PTAB beyond the issue of f~ir market valuation originally challenged. See, e.g., People ex rel Vuagniaux v. City of Edwardsville. 254111. App. 3d 407, 672 N.E.2d 40(1996) (appellate review limited to consideration of the errors raised by the property owner, where the city was not awarded by the trial court all that it sought and did not file a cross-appeal regarding those issues on which it did not prevail).

Nor does PTAB's proclaimed "routine" use of sales ratio studies authorize use of the studies here when the issue is not raised and supporting evidence is not submitted by the party bearing the burden of proof. We rejected this argument in Bosch and noted that an agency's routine practice of using certain evidence in reaching its decision does not eliminate the requirement that the evidence relied on be introduced by the party bearing the burden of proof Bosch 339 III App. 3d at 539, citing Commonwealth Edison Co. v. Property Tax Appeal Board 115 III. App. 3d 371, 379, 450 N.E.2d 780 (1983).

Our decision in Bosch also rejected PTAB's arguments relating to its authority to take judicial notice of sales ratio studies. See Bosch. 339 Ill App. 3d at 541 (courts may not take judicial notice of sales ratio studies which represent critical evidentiary material that goes to the heart of a contested issue); Bosch. 339 LII App. 3d at 541 (sales ratio studies are not within PTAB's specialized knowledge or expertise). Nor does PTAB's reliance on its legislative mandate to establish an "informal procedure" and "eliminate formal rules of pleading, practice and evidence" (35 ILCS 200/16-180(2000)) allow PTAB to take judicial notice of evidentiary material not submitted by the party bearing the burden. PTAB contends, without citation to authority

other than its own practices, that its "routine" use of sales ratio studies implements the informal procedure contemplated by section 16-180 of the Property Tax Code (Code) (35 ILCS 200/16-180 (West 2000)). We disagree.

PTAB stresses that its rules allow consideration of sales ratio studies in residential appeals. 86111. Adm. Code 1910.50(c)(2) (Conway Greene CD-ROM 2002). PTAB maintains that the routine practice of taking judicial notice of sales ratio studies promotes consistency and fairness. PTAB also states in its brief that unrepresented taxpayers, both residential and commercial, may not be aware of the sales ratio studies or their significance and should have the benefit of their use. Setting aside a troublesome impression left by this argument—that PTAB is invested with an advocacy role for the taxpayer as part of its mandate—"routine practices" unchallenged in residential cases cannot be elevated to precedent in the appellate court where they have been challenged.

The argument also does not address an observation made in Bosch: that PTAB continues to operate as if an objection by the Joint Committee on Administrative Rules (JCAR) to a proposed PTAB rule-a rule that did not distinguish between residential and commercial appeals-had not been made. It was clear from the administrative record that PTAB amended its proposed rule to address JCAR's objections. Bosch. 339 III App. 3d at 545.

We must conclude that neither principles of administrative review nor PTAB's own rules grant PTAB the authority to do what it did here-remedy an alleged uniformity violation never raised by the taxpayer in the original appeal before the Board or the proceedings before PTAB.We are not persuaded that an argument proposed by an amicus that section 8-40 of the Code (35 ILCS 200/8-40 (West 2000)) must alter our analysis of this case.

Section 8-40 incorporates the Code to implement review of final administrative decisions of the Department of Revenue. 35 ILCS 200/8-40 (West 2000). Final administrative decisions by the Department include assessment ratios and percentages promulgated for equalization purposes. See 35 ILCS 200/17-5 through 17-30 (West 2000). Amicus concludes from its reading of this section of the Code that sales ratio studies must be challenged, if at all, under administrative review when first promulgated. Absent an administrative review, the studies represent final binding decisions of an agency which must be accepted in subsequent litigation without challenge. We disagree.

Amicus overlooks that the Department's equalization factor is a legislative function to which different due process requirements apply. Advanced Systems. Inc. v. Johnson. 126111. 2d 484, 506, 535 N.E.2d 797 (1989). The hearing and review contemplated in section 8-40 is an information gathering forum in pursuit of legislative facts and not a "contested case" as that term is defined in the Illinois Administrative Procedure Act (5 ILCS 100/1-30 (West 2000)). Advanced Systems 126111. 2d at 506. The absence of a "contested case" makes inapplicable the "[t]rial-type procedures, including the taking of evidence subject to cross-examination," required in a contested case where individual legal rights, duties or privileges are at issue. Advanced Systems. 126111. 2d at 506; 5 ILCS 100/1-30 (West 2000). We do not believe that sales ratio studies, adopted in a legislative proceeding, must be accepted without challenge in a subsequent contested case, at the heart of which is the right to cross-examination.

The amicus argument also does not address the distinction between assessment and equalization. Assessment is the process of assigning value for tax purposes to individual parcels by the local assessment officials. In re Application of Cook County Collector. 133 LII. App. 3d 208, 211, 478 N.E.2d 1119 (1985). Equalization is a statutorily mandated

function by which the Department adjusts the aggregate assessed valuations of property in each county so that in every county the ratio of aggregate assessed valuations to fair cash value is 100%. Johnson, 133 Ill. App. 3d at 211. Equalization was not intended to adjust individual assessments. Johnson. 133 LII. App. 3d at 211. The Department's equalization function is not intended to be applied to achieve both a statewide balance and to adjust individual assessments. Our supreme court has addressed an analagous issue in a procedurally similar context involving standards promulgated by the illinois Pollution Control Board.

In Granite City Division of National Steel Co. v. illinois Pollution Control Board 155111.24 149, 613 N.E.2d 719 (1993), the distinction between standards promulgated by an administrative agency and the "calculated criterion" used to set those standards is clarified:

> "'Once a standard has been established by Board regulations, and it has withstood any appeals, the validity of that number itself cannot be subsequently challenged in a contested case setting. However, an Agency calculated criterion can. Because criteria numbers will be generated without the benefit of statewide public participation, and because application *** necessarily require[s] the use of assumptions and professional judgment about which reasonable experts may disagree, the validity and correctness of application of a criterion must be reviewable by the Board on a case-by-case basis when the criterion is applied to a particular situation. ***' Board Order, at 30." Granite City 155 III. 2d at 176.

We believe the distinction drawn in Granite City is persuasive when we consider a statewide equalization factor on the one hand and the sales ratio studies that underpin that factor on the other. The distinction is in

accord with those drawn in cases such as Airev v. Department 116 Ill. 2d 528, 537-38, 508 N.E.2d 1058 (1987), and Advanced Systems. Inc. v. Johnson. 126111. 2d 484,496, 535 N.E.2d 797 (1989), on the one hand, and a contested case In re Application of Rosewelt 106111. 2d 311,478 N.E.2d 343 (1985), on the other.

We conclude that the taxpayer here did not timely raise a uniformity challenge so as to justify the relief granted. We remand with directions to PTAB to apply the 38% level of assessment contained in the Cook County ordinance. We need not consider PTAB's use of sales ratio studies as authority to deviate from the Cook County ordinance or PTAB's reading of the 2½: 1 constitutional ratio limitation in light of our conclusion.

Reversed and remanded with directions.

GREIMAN and McBRIDE, JJ., concur.

No: 1-01-3232

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

COOK COUNTY BOARD OF REVIEW,	) Petition for Review) of a Decision of the) Property Tax Appeal) Board
Petitioner,	)
V.	)
ILLINOIS PROPERTY TAX APPEAL BOARD, an administrative agency created by 35 1LCS 20017-5, and THE LURLE COMPANY, (33 N. LaSalle, Chicago), taxpayer,	)))) PTAB Docket Nos) 97-24242-C-3 and) 98-26195-C-3
Respondents.	)

ILLINOIS PROPERTY TAX APPEAL BOARD'S AFFIDAVIT OF INTENT TO SEEK REVIEW IN THE ILLINOIS SUPREME COURT STATE OF ILLiNOIS

COUNTY OF COOK)
) SS.
)

KAREN J. DIMOND, being first duly sworn, deposes and states as follows:

1. I am an Assistant Attorney General in the Civil Appeals Division of the Illinois Attorney General's Office

and am the attorney responsible for representing the Illinois Property Tax Appeal Board in the above captioned appeal.

2. I have been requested by the Illinois Property Tax Appeal Board, and intend in good faith, to seek review by the Supreme Court of the Appellate Court's decision of December 16, 2003.

SUBSCRIBED and SWORN to before me
January, 2004.

/s/NOTARY PUBLIC

STATE OF ILLINOIS)
) SS.
COUNTY OF C00K)

PROOF OF SERVICE

The undersigned, being first duly sworn upon oath, deposes and states that copies of the foregoing Affidavit of Intent to File a Petition for Leave to Appeal were served upon the below-named parties on January 6,2004, by depositing such copies in the United States mail at 100 West Randolph Street, Chicago, illinois, before 5:00 p.m. m envelopes bearing sufficient postage.

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SUBSCRIBED and SWORN to before me
6th day of January, 2004.

/s/NOTARY PUBLIC

App. 242

No: 1-01-3232

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

COOK COUNTY BOARD OF REVIEW,	) Petition for Review) of a Decision of the) Property Tax Appeal) Board
Petitioner,	)
V.	)
	)
	)
ILLINOIS PROPERTY TAX APPEAL BOARD, an administrative agency created by 35 1LCS 20017-5, and THE LURLE COMPANY, (33 N. LaSalle, Chicago), taxpayer,	)))) Docket Nos) 97-24242-C-3 and) 98-26195-C-3
Respondents.	)

RESPONSE BRIEF OF RESPONDENT THE LURIE COMPANY

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C. Cook County's Tax Assessment of the Property Also Violates the Equal Protection Clause of the United Stated Constitution.

The evidence in the instant matter also establishes that Cook County's assessment of the Property for the 1997 and 1998 tax years violates Lurie=s equal protection rights guaranteed by the United States Constitution. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution "* * * 'protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class.'" *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County, W. Va.*, 488 U.S. 336, 345 (1989) (quoting *Hillsborough v. Cromwell*, 326 U.S. 620 (1946)); *see also* U.S. Const. amend. XIV, §1. The "'intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property.'" *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County, W. Va.*, 488 U.S. at 345 (quoting *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350 (1918)); *see also Sioux City Bridge Co. v. Dakota County, Neb.*, 260 U.S. 441, 442 (1923) (" * * * the charge made by the Bridge Company in this case was that the State through its duly constituted agents, the County Assessor and County Board of Equalization improperly executed the Constitution and taxing laws of the State and arbitrarily assessed the Bridge Company's property at One Hundred Per Cent (100%) of its true value and all the other real estate and its representatives in the County at 55%." "* * * this Court holds that the right of the taxpayer whose property alone is taxed at 100% of its true value is to have the assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of the statute." Also at page 447 (" * * * it must be regarded as settled that intentional systematic undervaluation by state

officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property.")

The constitutionality of a county's tax assessment scheme under the Equal Protection Clause as it related to an individual assessment was addressed by the U.S. Supreme Court in *Allegheny Pittsburgh Coal Co. v. County Comm=n of Webster County, W. Va.* In that case, the Webster County tax assessor used the sales prices of recently sold properties to calculate the assessed values for some properties, but made only minor modifications in the assessed values of other properties in the same class without recent sales prices. *Id.* at 338-42. The property owner, Allegheny Pittsburgh Coal Co. ("Allegheny"), initially sought relief from the assessment before the County Commission of Webster County sitting as a review board over property assessments. *Id.* at 339. Allegheny argued before the county commission that the assessment policy of the Webster County assessor systematically resulted in appraisals for its property that were excessive compared to the appraised value of similar parcels that had not been recently conveyed. *Id.* The county commission affirmed the assessments for each year at issue. *Id.* On appeal, the circuit court held that this system of real property assessment systematically and intentionally discriminated against Allegheny in violation of the state constitution and the Fourteenth Amendment's Equal Protection Clause. *Id.* at 339-40. On appeal, the Supreme Court of Appeals of West Virginia reversed. *Id.* at 342.

The U.S. Supreme Court granted *certiorari* to determine whether the county tax assessments denied Allegheny the equal protection of the law. *Id.* The U.S. Supreme Court reversed, holding that no rational basis existed for the county's assessment scheme and that the assessments on Allegheny's property violated the Fourteenth Amendment's Equal Protection Clause. *Id.* at 343. In support of its holding, the Court noted that the Equal Protection Clause

requires equality in tax treatment of similarly situated property owners. *Id.* at 343. In reviewing the effect of the county's assessment, the Court found that Allegheny's property had been assessed at a greater rate than comparable properties as a result of the county's systematic disparate assessment. *Id.* at 344. The Court further observed that the disparate application of the tax laws by the county assessor was contrary to the guidelines of the state tax commission regarding the assessment of real property. *Id.* at 345. In view of the above, the Court held:

> We have no doubt that petitioners have suffered from such "intentional systematic undervaluation by state officials" of comparable property in Webster County. Viewed in isolation, the assessments for petitioners' property may fully comply with West Virginia law. But the fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings. The relative undervaluation of comparable property in Webster County over time therefore denies petitioners the equal protection of the law.

Id. at 346.

As in *Allegheny*, Cook County's systematic disparate assessment of Lurie's Property violates the Equal Protection Clause of the Fourteenth Amendment. The evidence presented to the PTAB in the instant matter, including the Board of Review's own appraisal report, demonstrates that the Property was assessed at a higher level than the *de facto* level for assessment for other comparable Class 5a properties in Cook County. Specifically, the evidence demonstrated that the Cook County Assessor assessed Lurie's Class 5a Property at a 38% level in 1997 and 1998. However, as proved by the Board of Review's own appraisal

report, comparable Class 5a properties were assessed at a significantly lower rate during the same period B an average rate of 24.81%. (R. Vol. I, C121; Vol. II, 146, 150-151.). The Board of Review's appraisal report addressed seven recently sold properties which the Board of Review contended were comparable to Lurie's Property. (R. Vol. II, 146, 150-151, Vol. IV.). In each case the actual sale price was used by the Board of Review as the market value. As demonstrated by the Board of Review=s own evidence, the assessment levels for these seven properties in 1997 and/or 1998 were as follows:

Comparable Property No.	Assessment Amount	Level of Assessment
1	$33,750,000 (1997)	25.4%
2	$28,148,883 (1997)	28.3%
3	$_____	___%[1]
4	$2,102,571 (1997)	5.7%

Comparable Property No.	Assessment Amount	Level of Assessment
4	$2,017,886 (1998)	5.1%
5	$10,869,999 (1997)	27.4%
	$9,936,084 (1998)	25.1%
6	$6,327,756 (1997)	21.3%
7	$2,320,558 (1997)	50%
	$2,377,223 (1998)	51.4%

(R. Vol. II, 150-151; Vol. IV.)

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[1] Lurie was unable to calculate the actual level of assessment for Comparable No. 3 as the parcel number contained in Board of Review=s appraisal report was not correct and, therefore, the assessment data for that parcel could not be obtained.

No. 03-1716

Supreme Court, U.S.
FILED
JUL 29 2004
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

THE LURIE COMPANY (221 N. LASALLE, CHICAGO, ILLINOIS),
Petitioner,

v.

COOK COUNTY BOARD OF REVIEW,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Illinois

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether jurisdiction lies under 28 U.S.C.A. 1257(a), where the petitioner's "federal questions" were neither passed upon nor presented in the state court.

2. Assuming *arguendo* that the issues now raised by the petitioner were passed upon or presented to the highest state court, whether jurisdiction lies under 28 U.S.C.A. 1257(a), where the state court decision fails to present a federal question.

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IN THE

Supreme Court of the United States

No. 03-1716

THE LURIE COMPANY (221 N. LASALLE, CHICAGO, ILLINOIS),

Petitioner,

v.

COOK COUNTY BOARD OF REVIEW,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Illinois

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Cook County Board of Review ("Board of Review"), respectfully requests that this Court deny the petition for writ of *certiorari* seeking review of the decision of the Illinois Appellate Court ("Appellate Court") in this case. The opinion of the Appellate Court (App. 51-61[1]) is reported at 345 Ill. App. 3d 539, 803 N.E.2d 55 (1st Dist. 2003).

[1] Citations to the petition for *certiorari* will be in the form of "Pet. __"; citations to the appendix to the petition will be in the form of "App. __."

STATEMENT OF THE CASE

Initially, the Board of Review notes that the instant petition contains materials in the appendix that were not a part of the record in the state court proceedings below. *See* App. 109-50. These materials are inappropriately included in the appendix, and the respondent respectfully suggests that they should have no bearing on the Court's consideration of the petition.

A. Summary Of Procedural History And Decision

The instant petition relates to a state court administrative review[2] of a state agency's decision involving a local real estate tax matter. The instant petitioner, The Lurie Company ("Lurie"), originally filed a tax appeal with the Board of Review[3] contesting only the market value of its property tax assessments for 1997 and 1998. *Cook County Bd. of Review v. Property Tax Appeal Bd. (The Lurie Co., taxpayer)*, 345 Ill. App. 3d 539, 541, 803 N.E.2d 55, 57 (1st Dist. 2003), *appeal denied* 2004 Ill. LEXIS 374-75 (Ill. March 26, 2004, Docket Nos. 97708, 97717); App. 53. After the Board of Review denied its appeal, Lurie filed an appeal with the Illinois Property Tax Appeal Board ("PTAB"),[4] again, contesting only market value. *Id.* The PTAB granted relief based upon Lurie's market value claim, as well as upon an issue under the Illinois Constitution[5] that Lurie belatedly presented to the

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[2] *See* Illinois Administrative Review Law, 735 ILL. COMP. STAT. ANN. 5/3-101 *et seq.* (West 2002).

[3] *See* 35 ILL. COMP. STAT. ANN. 200/16-5 through 16-15, and 16-95, *et seq.* (West 2002).

[4] *See* 35 ILL. COMP. STAT. ANN. 200/16-160, *et seq.* (West 2002).

[5] The PTAB granted additional relief based upon its interpretation of the "2 ½ to 1" limitation of the Illinois Constitution of 1970, Article IX, Section 4(b). *Lurie*, 345 Ill. App. 3d 539, 540-41, 803 N.E.2d 55, 57; App. 52-53. For counties in Illinois that classify real property for purposes of taxation, the "2 ½ to 1" limitation of Article IX, Section 4(b) of the Illinois Constitution prohibits the assessment level of the highest

PTAB as rebuttal after the Board of Review had filed its responsive pleadings and evidence. *Id.* at 541-43, 57-59; App. 54-56. The Board of Review sought judicial review of the PTAB's decision before the Appellate Court[6] contesting the PTAB's determination of the state constitutional issue.

The Appellate Court reversed the PTAB's decision on the state constitutional issue, holding that the PTAB lacked the authority to expand the scope of Lurie's tax appeal to include a state constitutional issue that was not raised at the Board of Review or timely presented in the filings before the PTAB. *Id.* at 545, 60; App. 58. This holding expressly followed an earlier decision by the Appellate Court in *Cook County Bd. of Review v. Property Tax Appeal Bd. (The Bosch Corp., taxpayer, et al.)*, 339 Ill. App. 3d 529, 791 N.E.2d 8 (1st Dist. 2003), *appeal denied* 205 Ill. 2d 578, 803 N.E.2d 480 (Ill. Oct. 7, 2003, Docket Nos. 96760, 96775).[7] *Id.* at 541-42, 57-58; App. 53. No rehearing petition was filed before the Appellate Court. Both the PTAB and Lurie filed petitions for leave to appeal ("PLA") in the Illinois Supreme Court.[8] App. 165-246. The Illinois Supreme Court denied both the PTAB's and Lurie's PLA. *Lurie*, 2004 Ill. LEXIS 374-75 (Ill. March 26, 2004, Docket Nos. 97708, 97717); App. 62.

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classification from exceeding 2 ½ times the level applied to the lowest classification. *Id.*

[6] Because Lurie requested more than $300,000 in assessed value reduction in its petition filed with the PTAB, direct administrative review in the Appellate Court was required. *See* 35 ILL. COMP. STAT. ANN. 200/16-195 (West 2002).

[7] In *Bosch*, the Appellate Court held, in relevant part, that the PTAB was precluded from granting relief on a constitutional claim by a taxpayer that was not timely raised before the Board of Review or the PTAB. *Bosch*, 339 Ill. App. 3d 529, 534-35, 791 N.E.2d 8, 13.

[8] Whether the Illinois Supreme Court grants such a PLA "is a matter of sound judicial discretion." Ill. S. Ct. Rule 315(a).

B. Relevant State Procedural Law and *Bosch*

Illinois courts have consistently held that, in cases arising under the Administrative Review Law (735 ILL. COMP. STAT. ANN. 5/3-101 *et seq.* (West 2002)), a claimant must assert any constitutional challenge at the earliest administrative level in order to preserve the issue for judicial review. *See Continental Paper Grading Co. v. Fisher*, 1 Ill. 2d 37, 45, 115 N.E.2d 291, 295 (1953); *see also Head-on Collision Line, Inc. v. Kirk*, 36 Ill. App. 3d 263, 268-69, 343 N.E.2d 534, 538-39 (1st Dist. 1976). Moreover, under Illinois law, issues not placed before administrative agencies are deemed waived. *Texaco-Cities Service Pipeline Company v. McGaw*, 182 Ill. 2d 262, 278-79, 695 N.E.2d 481, 489 (1998).

In the context of a real estate tax appeal, Illinois courts have consistently held that the burden to raise and prove a state constitutional tax claim rests squarely upon the taxpayer, and that the burden must be carried by clear and convincing evidence. *In re Application of Rosewell (U.S. Steel, taxpayer)*, 106 Ill. 2d 311, 324-25, 478 N.E.2d 343, 349-50 (1985); *Walsh v. Property Tax Appeal Bd.*, 181 Ill. 2d 228, 234, 692 N.E.2d 260, 262 (1998). For tax appeals filed with the PTAB, by statute, a taxpayer is required to file a petition with the PTAB "setting forth the facts upon which he or she bases the objection, together with a statement of the contentions of law which he or she desires to raise, and the relief requested." 35 ILL. COMP. STAT. ANN. 200/16-160 (West 2002).

Consistent with Illinois law, the PTAB's Rules require that in a petition for appeal a taxpayer "state the facts upon which the contesting party bases his objection to the decision of the board of review, together with a statement of the contentions of law which he desires to raise." 86 Ill. Admin. Code 1910.30 (h) (Conway Greene CD-ROM 2002); App. 74. Moreover, "if contentions of law are raised, the contesting party shall submit a brief in support of his position with the

petition." *Id.* Failure to comply with these requirements "shall result in dismissal of the appeal." *Id.* The PTAB rules further emphasize that "all information required to fully complete the petition shall be furnished by the contesting party at the time the petition is filed." 86 Ill. Admin. Code 1910.30(k) (Conway Greene CD-ROM 2002); App. 75.

When called to interpret the PTAB's statutory and regulatory scheme, Illinois courts have held that a taxpayer's claims are fixed at the time it files its petition with the PTAB. *See Co. of Coles v. Property Tax Appeal Board*, 275 Ill. App. 3d 945, 948-49, 657 N.E.2d 673, 676 (4th Dist. 1995); *Comm. High School District v. PTAB*, 288 Ill. App. 3d 386, 388, 682 N.E.2d 235, 237 (2nd Dist. 1997). Based upon the legal framework outlined above, and in a context identical to the instant case, the Illinois Appellate Court held that the PTAB could not consider state constitutional claims not originally raised by the taxpayer in either its appeal to the Board of Review or the PTAB. *Bosch*, 339 Ill. App. 3d 529, 539; 791 N.E.2d 8, 17. In apparent agreement, subsequent to the *Bosch* decision the Illinois General Assembly amended the Illinois Property Tax Code[9] to clarify that a taxpayer's appeal is "limited to the grounds listed in the petition filed with the [PTAB]." 35 ILL. COMP. STAT. ANN. 200/16-180, *as amended*, P.A. 93-0248 (West Supp. 2004). In the instant case, the Appellate Court expressly relied upon the *Bosch* case, finding the facts to be "procedurally similar." *Lurie*, 345 Ill. App. 3d at 543, 803 N.E.2d at 59; App. 56.[10]

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[9] *See* 35 ILL. COMP. STAT. ANN. 200/1-1, *et seq.*

[10] The *Bosch* case had originally been decided, pending petitions for rehearing, during the briefing of the instant case before the Appellate Court. The original opinion was reported at 2002 Ill. App. LEXIS 730 (Ill. App. Ct., Aug. 20, 2002). The petitions for rehearing in *Bosch* were denied by the Appellate Court, and the Court's original opinion was only modified to include some additional unpublished material. *See Bosch*, 339 Ill. App. 3d 529, 791 N.E.2d 8.

REASONS FOR DENYING THE WRIT

Lurie argues that this Court should grant *certiorari* based on the contention that the Illinois Supreme Court's and the Appellate Court's refusal to consider the merits of its state constitutional claim violated Lurie's due process rights because such refusal constituted a substantive change in Illinois law that retroactively deprived Lurie of its property rights. As will be explained herein, the due process arguments advanced in the instant petition were not raised in the state court below, and, thus, were not passed upon by the state court. Moreover, the Appellate Court's decision does not present a substantial federal question. Accordingly, this Court should deny the petition.

I. JURISDICTION DOES NOT LIE UNDER 28 U.S.C.A. 1257(a), AS LURIE'S "FEDERAL QUESTIONS" WERE NEITHER PASSED UPON NOR PRESENTED IN THE STATE COURT.

Neither the Illinois Appellate Court nor the Illinois Supreme Court passed upon the issues now raised by Lurie. In its petition, Lurie argues for the first time that the Appellate Court's decision, and the Illinois Supreme Court's denial of Lurie's PLA, violated the federal due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution by substantively changing Illinois law and retroactively applying this change to Lurie. Regardless of whether its arguments are well founded, Lurie failed to present these issues at the state court level.

Where the state court decision is silent on the federal question presented by a petition for *certiorari*, the Court will assume that the issue was not properly presented. *Adams v. Robertson*, 520 U.S. 83, 86-87 (1997) (citing *Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 550 (1983)). Accordingly, Lurie bears the high burden of showing that a federal question was in fact properly raised,

such that the state court had a fair opportunity to address it. *Campbell v. Louisiana*, 523 U.S. 392, 403 (1998); *Adams*, 520 U.S. 83, 86. In carrying this burden, Lurie must demonstrate that the federal issue was raised "'at the time and in the manner required by the state law,'" (citations) and that it "presented the particular claim at issue here with 'fair precision and in due time,'" (citations). *Adams*, 520 U.S. at 87.

Moreover, U.S. Supreme Court Rule 14.1(g)(i) requires that a *certiorari* petition specify the stage in proceedings when the federal questions sought to be reviewed were raised, the method or manner of raising them, and the way in which they were passed on by the state courts, with specific reference to portions of the record where the matter appears. In a perfunctory attempt to comply with these requirements, Lurie asserts that "Due process questions were first raised by Petitioner in the Response Brief of Respondent, The Lurie Company, before the Appellate Court and, again, in the Petition for Leave to Appeal of the Lurie Company before the Illinois Supreme Court." Pet. 6. However, neither Lurie's Response Brief filed in the Appellate Court nor the PLA filed in the Illinois Supreme Court raised the particular due process questions now presented to this Court.

A. Lurie Failed To Raise A Federal Question In The State Courts.

Lurie's Response Brief in the Appellate Court presented the argument that "Cook County's Tax Assessment of the Property Also Violates the Equal Protection Clause of the United States Constitution." App. 243. Lurie made no claim that a federal due process right was being infringed, let alone the particular due process right now raised before this Court. Moreover, the equal protection argument presented to the Appellate Court related specifically to Lurie's claim that the contested tax assessment operated to discriminate against it in violation of the federal equal protection clause. This

argument is quite distinct from the claim now advanced by Lurie, that the Appellate Court's decision, rather than the contested tax assessment, operated to apply a new rule of law retroactively against Lurie in violation of the federal due process clauses. This new argument was never before the Appellate Court.

Lurie's PLA to the Illinois Supreme Court also failed to raise the particular claims now being advanced. In its PLA, Lurie vaguely invoked the "due process guaranteed by the Illinois and United States Constitution." App. 170-71. However, Lurie addressed completely different constitutional concerns than those now presented. As discussed further below, in its PLA Lurie generally referred to a "taxpayers. . . right to due process and equal protection" in scattered contexts. *See* App. 174-85. Moreover, Lurie failed to support its limited arguments on this subject with any cases involving the United States Constitution. *Id.*

In its PLA, Lurie first presented the argument that "The [Appellate Court's] erroneous ruling. . . deprives taxpayers of their constitutional right to due process and equal protection." App. 174. Yet, in making this argument, Lurie based its claims on its assertions that:1) the Appellate Court's decision would require the PTAB to cease conducting *de novo* hearings; and 2) the Appellate Court's decision would require extensive hearings before the Board of Review that would neither be practically available nor legally permissible. App. 174-80. Lurie concluded that the Illinois Supreme Court "should grant review to make clear that boards of review are not bodies of record, and that limiting the PTAB to addressing only issues raised at the board ofreview [sic] is contrary to law, wholly impractical and most importantly will result in no available remedy for taxpayer's [sic] whose constitutional rights to due process and equal protection *have been* violated." App. 179-80 (emphasis supplied).

In the PLA, Lurie also briefly invoked the "Illinois and United States Constitutions" in arguing that the Appellate Court's ruling was inconsistent with existing Illinois state law. App. 185. However, in making this argument, Lurie based its constitutional claims on its asserted "right to a fair and equitable *assessment*," rather than the due process rights now asserted. *Id.* (emphasis supplied). Lurie did not argue therein that the Appellate Court's *decision* operated to retroactively deprive it of any property rights. App. 182-85. Moreover, Lurie made no reference to due process in this argument. *Id.*

A fair reading of Lurie's PLA reveals a lack of clarity as to the particular constitutional claims presented. Certainly, Lurie's broad attempts to invoke the equal protection and the due process clauses of the Illinois and United States constitutions in its PLA did not articulate the particular federal due process claims now advanced in the instant petition. Rather, in its PLA, Lurie asserted a generalized constitutional argument that is significantly different in substance from the "federal question" urged in its petition.

The relevant arguments advanced in the PLA were limited to: 1) Lurie's perception that the Appellate Court's decision mandated a procedural framework wherein taxpayers would not be afforded due process and equal protection of the laws when they proceed before the Board of Review or the PTAB; and 2) a generalized claim that the Appellate Court's decision somehow perpetuated an inequitable tax assessment that violated the equal protection and due process clauses of the state and federal constitutions. In its PLA, Lurie never raised the claim now presented to this Court, namely, that the Appellate Court's decision retroactively applied new law to Lurie's property in violation of the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution. Accordingly, Lurie has not demonstrated that it

"presented the particular claim at issue here with fair precision and in due time." *See Adams*, 520 U.S. at 87.

B. Lurie Cannot Raise A Federal Issue For The First Time In This Court.

In presenting its newly asserted argument in the instant petition, Lurie attempts to avail itself of an exception to the general rule that a federal question may not be raised for the first time in a petition for *certiorari*. *See Saunders v. Shaw*, 244 U.S. 317, 320 (1917). This limited exception is appropriately invoked in that rare situation where the highest state court, following a "surprise" decision wherein the federal issue is born, declines to entertain a petition for rehearing and the federal question can be raised in no other way than through a petition for *certiorari*. *Id.* To this end, Lurie relies upon *Richards v. Jefferson County, Ala.*, 517 U.S. 793, 797 n. 3 (1996), and *Brinkerhoff-Faris Trust Co. v. Hill*, 281 U.S. 673, 677-78 (1930). Lurie's reliance upon this exception is misplaced.

To begin, Lurie never filed a petition for rehearing either in the Appellate Court or the Illinois Supreme Court. In the cases cited by Lurie where this Court has recognized the "surprise decision" exception, the aggrieved party had made some effort, such as filing a rehearing petition, to bring the new federal claim to the attention of the state court. *See Richards*, 517 U.S. 793, 797 n. 3; *Brinkerhoff-Faris*, 281 U.S. 673, 677-78. No legitimate effort in this regard was made in the instant case. Lurie failed to file a petition for rehearing with the Appellate Court once that court issued the decision Lurie now claims created the federal issue. Moreover, as discussed above, in its PLA Lurie did not raise the particular federal issue asserted here. Finally, assuming *arguendo* that

the Appellate Court's decision represented any change in Illinois law,[11] this ruling represented no surprise to Lurie.

Lurie must show that the decision of the state court was a surprise and could not have been reasonably anticipated from prior decisions. *Herndon v. Georgia*, 295 U.S. 441 (1935). Lurie acknowledges in its petition that the "Appellate Court followed its own months old decision in *Cook County Bd. of Review v. Property Tax Appeal Bd.*, 792 N.E.2d 8 (Ill. App. Ct. 2002) (sometimes referred to as "*Bosch*") in reaching its decision in the instant case."[12] Pet. 8 n. 3. The "surprise" change in the law now complained of by Lurie was, in fact, existing law predating the decision of the Appellate Court in this case by more than a year. Lurie cannot plead ignorance of the ruling in the *Bosch* case, and was therefore bound to anticipate the probability of a similar ruling in its own case.[13] *See Herndon*, 295 U.S. 441, 446. As noted above, under the procedural facts of this case, *Richards*, 517 U.S. 793, and *Brinkerhoff-Faris*, 281 U.S. 673, are readily distinguishable.

A careful review of the instant petition reveals a garden variety state law procedural case. Where a state court does not consider a constitutional attack because it was not properly raised, this Court will decline jurisdiction. *See Beck v. Washington*, 369 U.S. 541, 550 (1962). And where the highest state court is completely silent on the federal question, this Court must assume that the silence is due to

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[11] The Board of Review sharply contests this claim and addresses the relevant Illinois law in its Statement Of The Case, section B *supra*, and in its argument herein at section II *infra*.

[12] In its PLA filed in the Illinois Supreme Court, Lurie noted that the Appellate Court had made the identical legal ruling as that complained of in the instant case over one year before the filing of the PLA. (App. 177).

[13] During the briefing of the instant case before the Appellate Court, the PTAB, as appellee, anticipated that the *Bosch* case might be applied in the instant case, filing a Supplemental Brief with the Appellate Court discussing the impact of the *Bosch* decision.

the petitioner's failure to comply with the state's procedural requirements. *Bailey v. Anderson*, 326 U.S. 203, 206-07 (1945).

In the instant case, the state courts' silence as to the "federal question" raised in the instant petition, may be attributed solely to Lurie's utter failure to present this question at the state court level. Moreover, the Appellate Court's decision itself was based upon Lurie's failure to properly raise a state constitutional tax claim as required under Illinois law. *Lurie*, 345 Ill. App. 3d at 541-45, 803 N.E.2d at 57-60; App. 53-58. Lurie now claims that the Appellate Court's decision to follow established Illinois law on this state procedural question created the federal issue. But Lurie's claim must fail at this late juncture. The Appellate Court's decision turned upon Lurie's consistent failure to raise and support its constitutional claims in a timely manner. At every level of the state proceedings, administrative and judicial, Lurie has habitually interposed untimely, purported constitutional issues, seemingly as an afterthought. Where reasonable state procedures are not observed in claiming a constitutional violation, this Court will decline to exercise jurisdiction. *Mutual Life Ins. Co. v. McGrew*, 188 U.S. 291, 309 (1903). Accordingly, in the instant case, this Court should decline jurisdiction.

II. ASSUMING *ARGUENDO* THAT THE ISSUES NOW RAISED BY LURIE WERE PASSED UPON OR PRESENTED TO THE HIGHEST STATE COURT, JURISDICTION DOES NOT LIE UNDER 28 U.S.C.A. 1257(a), AS THE STATE COURT DECISION FAILS TO PRESENT A FEDERAL QUESTION.

A. Jurisdiction Does Not Lie As The State Court Decision Involves Only Questions Of State Law.

Jurisdiction in the United States Supreme Court does not attach where the judgment of the state court rests on "independent and adequate" state grounds. *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945). Where a state court decides a matter pursuant to state law independent of any federal question, the case is not reviewed by the Supreme Court of the United States unless the non-federal ground is so unfounded as to be considered arbitrary. *McCoy v. Shaw*, 277 U.S. 302, 303 (1928). The power of the U.S. Supreme Court over state court judgments is limited to its authority to correct a matter to the extent the state court incorrectly adjudges federal rights. *Pitcairn*, 324 U.S. 117, 126. In determining whether an independent and adequate state ground exists, the Supreme Court will consider whether the state ground is free of entanglement with a federal question, and whether the ground is adequate to sustain the state court's judgment without more. *Black v. Cutter Laboratories*, 351 U.S. 292, 298 (1956).

In the present case, the Appellate Court concluded that, under Illinois law, Lurie's state constitutional tax claims could not be addressed where Lurie failed to timely raise such claims at the Board of Review and PTAB. *Lurie*, 345 Ill. App. 3d at 545, 803 N.E.2d at 60; App. 58. The Appellate Court decided this case on a procedural point of Illinois law that it found to be controlled by its earlier decision in *Bosch*

(339 Ill. App. 3d at 539, 791 N.E.2d at 17). *Lurie*, 345 Ill. App. 3d at 541-42, 803 N.E.2d at 57-58; App. 53. The Appellate Court's decision rested exclusively upon its interpretation of Illinois law. State courts are the "ultimate expositors of state law" and this Honorable Court is bound by their construction absent extreme circumstances. *Mullaney v. Wilbur*, 421 U.S. 684, 689 (1975).

B. The State Court Correctly Applied Illinois Law On Procedural Questions, And Its Decision Does Not Raise Federal Due Process Issues.

The Illinois Appellate Court correctly held that the scope of PTAB's review could not be enlarged to include a state constitutional tax claim where Lurie failed to properly present such a challenge in its property tax appeal filings. *Lurie*, 345 Ill. App. 3d at 545, 803 N.E.2d at 60; App. 58. This holding followed existing precedent, as previously outlined in the Board of Review's Statement Of The Case, *supra*. *See Continental Paper*, 1 Ill. 2d 37, 45, 115 N.E.2d 291, 295; *Head-on Collision Line*, 36 Ill. App. 3d 263, 268-69, 343 N.E.2d 534, 538-39; *Texaco-Cities*, 182 Ill. 2d 262, 278-79, 695 N.E.2d 481, 489; *U.S. Steel*, 106 Ill. 2d 311, 324, 478 N.E.2d 343, 349; *Walsh*, 181 Ill. 2d 228, 234, 692 N.E.2d 260, 262; *Co. of Coles*, 275 Ill. App. 3d 945, 948-49, 657 N.E.2d 673, 676; *Comm. High School District*, 288 Ill. App. 3d 386, 388, 682 N.E.2d 235, 237-38; *see also Bosch*, 339 Ill. App. 3d at 539, 791 N.E.2d at 17.

Lurie elected only to challenge the market value of its real estate tax assessment before the Board of Review, and thereafter appealed to the PTAB challenging only market value. *Lurie*, 345 Ill. App. 3d at 541-42, 803 N.E.2d at 57-58; App. 53. Lurie failed to raise its state constitutional tax claim and also failed to timely submit any evidence that would support such a constitutional claim. *Id.* at 541-45, 57-60; App. 53, 55-58. Based upon these procedural facts, the Appellate Court correctly concluded that under Illinois law

the PTAB was limited to a consideration of market value only. *Id.*; *see also Bosch*, 339 Ill. App. 3d at 539, 791 N.E.2d at 17. Where the PTAB sought to address a state constitutional tax claim that was not properly developed by the taxpayer, either at the Board of Review or at the PTAB, the Appellate Court correctly applied existing Illinois law in its determination that it would not consider such constitutional claims on administrative review. *Id.*

Illinois courts have long held that reviewing courts must be especially wary of treading upon constitutional issues not raised before the administrative agencies below, as complaining parties have "the obligation of raising constitutional questions at the earliest opportunity." *Head-on Collision*, 36 Ill. App. 3d at 268-69, 343 N.E.2d at 538; *see also Texaco-Cities*, 182 Ill. 2d at 278-79, 695 N.E.2d at 489. The burden to raise and prove a state constitutional tax claim has always rested on the taxpayer. *Bosch*, 339 Ill. App. 3d at 539, 791 N.E.2d at 17 (citing *U.S. Steel*, 106 Ill. 2d 311, 478 N.E.2d 343); *see also Walsh*, 181 Ill. 2d at 234, 692 N.E.2d at 262. Lurie did not preserve its state constitutional claim for judicial review in the Appellate Court. *Lurie*, 345 Ill. App. 3d at 541-45, 803 N.E.2d at 57-60; App. 53, 55-58. As noted above, the law on this procedural point is well settled in Illinois. A state may attach reasonable time limitations to the assertion of constitutional claims. *Michel v. Louisiana*, 350 U.S. 91, 97 (1955). Illinois law on this procedural issue represents a reasonable state procedural limitation. *Id.* Thus, in as much as the Illinois Appellate Court followed established Illinois law on this state procedural issue, Lurie fails to present a federal question for this Court to consider. *See Beck*, 369 U.S. 541, 550.

Lurie relies upon several cases in support of its federal due process arguments: *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982); *Richards*, 517 U.S. 793; *Brinkerhoff-Faris*, 281 U.S. 673; and *Sioux City Bridge Co. v. Dakota County, Neb.*,

260 U.S. 441 (1923); Pet. 12-18. Lurie's reliance on these cases is misplaced, as they are readily distinguished from the instant case. The common thread in each of these cases is that the state action complained of, through no omission of the complaining party, operated to completely deny the complainant any opportunity to be heard on its underlying claim. That type of deprivation is profoundly different from that suggested in the instant case, where the Appellate Court's reasoned declination of Lurie's state constitutional tax claim was based upon Lurie's failures to comply with the existing procedural requirements under Illinois law.

In the instant case, Lurie has at all times had an available remedy to address its state constitutional tax claims, or for that matter any tax claims, by way of either an administrative proceeding before the PTAB with administrative judicial review, or judicial proceeding in the first instance in state court.[14] It was Lurie's total disregard for existing state procedural requirements, and nothing else, that caused the Illinois courts to decline consideration of its state constitutional claim. Unlike the Missouri Supreme Court in *Brinkerhoff*, *supra*, the Illinois Appellate Court did not overrule established precedent depriving the taxpayer of any forum within which to assert his claims. Instead, the Appellate Court adhered to Illinois precedent, requiring parties to present constitutional claims at the earliest moment and to timely raise such issues in property assessment appeals at PTAB. *See Continental Paper*, 1 Ill. 2d at 45, 115 N.E.2d at 295; *Head-on Collision*, 36 Ill. App. 3d at 268-69, 343 N.E.2d at 538; *see also Bosch*, 339 Ill. App. 3d at 539, 791

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[14] Under Illinois law, a taxpayer has two alternative, mutually exclusive, statutory remedies to challenge its real estate assessment: 1) filing an appeal before the PTAB, which is heard *de novo* (*See* 35 ILL. COMP. STAT. ANN. 200/16-160 *et seq.* (West 2002)); or 2) filing a complaint in state court, which is also heard *de novo* (*See* 35 ILL. COMP. STAT. ANN. 200/23-5 *et seq.* (West 2002)).

N.E.2d at 17. Such a ruling by the Illinois courts does not raise any due process issues.

The Appellate Court issued its decision pursuant to established state precedent and rules of administrative procedure. Because the Appellate Court's determination rested on a solid and independent state foundation, its decision cannot be considered so arbitrary as to warrant review by this Honorable Cour *See McCoy*, 277 U.S. 302, 303, (citing *Leathe v. Thom*, 207 U.S. 93, 99 (1907)); *Vandalia Railroad v. South Bend*, 207 U.S. 359, 367 (1907). Accordingly, this Court should decline jurisdiction. *See Pitcairn*, 324 U.S. at 126.

C. Assuming *Arguendo* A Federal Question Is Raised By The Appellate Court's Decision That Lurie Waived Its State Constitutional Claim By Not Raising It At The Board Of Review, Lurie's Additional Failure To Properly Raise Its Claim Before The PTAB Provided An Independent And Adequate State Ground On Which The Appellate Court Ruled.

The Appellate Court concluded that Lurie's state constitutional tax claims could not be addressed where the taxpayer failed to timely raise such claims before the Board of Review *and* before the PTAB. *Lurie*, 345 Ill. App. 3d at 545, 803 N.E.2d at 60; App. 58. As earlier outlined in the Board of Review's Statement Of The Case, *supra*, under established Illinois precedent and the PTAB's Rules, a taxpayer's claims are required to be presented to PTAB at the time the petition is filed. *Bosch*, 339 Ill. App. 3d at 540, 791 N.E.2d at 18; *Co. of Coles*, 275 Ill. App. 3d at 948-49, 657 N.E.2d at 676; *Comm. High School*, 288 Ill. App. 3d at 388, 682 N.E.2d at 237-38; 86 Ill. Admin. Code 1910.30(h) & (k) (Conway Greene CD-ROM 2002); App. 74-75.

Moreover, according to PTAB's own Rules, parties are precluded from raising-new claims on rebuttal. 86 Ill. Admin. Code 1910.66 (b) (Conway Greene CD-ROM 2002); App. 88. "Rebuttal evidence shall not consist of new evidence . . . A party to the appeal shall be precluded from submitting its own case in chief in the guise of rebuttal evidence." *Id.* In the present case, Lurie attempted to present state constitutional claims, pursuant to Art. IX section 4(b) of the Illinois Constitution on rebuttal at PTAB. In so doing, Lurie failed to comply with existing state procedures and precedent. *See Bosch*, 339 Ill. App. 3d at 538-40, 791 N.E. 2d at 16-18. Lurie's failure to follow the PTAB's Rules and existing Illinois precedent in properly presenting its state constitutional tax claim provided an independent and adequate basis for the Appellate Court's decision.

Assuming *arguendo* that the Appellate Court established an unprecedented requirement that a taxpayer raise constitutional challenges concerning its property assessments at the Board of Review, Lurie still cannot get beyond its failure to properly raise its state constitutional claim before the PTAB. Existing law required taxpayers, at a minimum, to present all claims concerning their property assessment at the time of filing petitions with the PTAB. *Id.*; *Co. of Coles*, 275 Ill. App. 3d at 948-49, 657 N.E. 2d at 676; *Comm. High School District*, 288 Ill. App. 3d at 388, 682 N.E.2d at 237; 86 Ill. Admin. Code 1910.30(h) & (k), 1910.66 (b) (Conway Greene CD-ROM 2002); App. 74-75, 88. Lurie failed to preserve any constitutional issues arising in the instant matter by not complying with this requirement. Because the Appellate Court decided this matter pursuant to procedural defects not only in the Board of Review appeal, but also in Lurie's subsequent PTAB appeal, there is no need for this Court to address the issues now presented by Lurie. The Appellate Court decided the underlying matter pursuant to existing state law, and thus there are independent and

adequate state law grounds sufficient to sustain the judgment. *Id.*

Established precedent dictates that this Honorable Court not engage in the determination of constitutional issues unnecessary to the outcome of a controversy before it. *United States v. Raines et al.*, 362 U.S. 17, 20-21 (1960); *U.S. v. Zayd Hassan, et al.*, 257 F. Supp. 2d 191, 196 (D.C. 2003). Were the Court to address a federal question where state law dictates the same result, it would effectively render an advisory opinion. *Pitcairn*, 324 U.S. at 126; *Michigan v. Long*, 463 U.S. 1032, 1042 (1983). Such action is contrary to law and beyond the authority vested in the federal judiciary. *See* U.S. CONST. Art. III, *see also Pitcairn*, 324 U.S. at 126; *Uhler v. Am. Fed. Of Labor- Congress of Industrial Organizations*, 468 U.S. 1310, 1311 (1984). Were this Honorable Court to grant the request for *certiorari* and address the purported federal question now urged by Lurie, it would offer only an advisory opinion. Assuming *arguendo* that this Court found that Lurie was denied due process because of a procedural change relative to preserving constitutional issues at the Board of Review, as Lurie suggests, Lurie still failed to comport with existing Illinois procedural requirements for raising and preserving constitutional claims before PTAB. *Bosch*, 339 Ill. App. 3d at 538-40, 791 N.E.2d at 16-18; *see also* 86 Ill. Admin. Code 1910.30(h) & (k), 1910.66 (b) (Conway Greene CD–ROM 2002); App. 74-75, 88. Thus, the outcome of the instant matter ultimately rests on independent state law grounds as enumerated by the Appellate Court regardless of any federal question now urged by petitioner.

CONCLUSION

For all of the foregoing reasons, the petition for writ of *certiorari* should be denied.

Respectfully submitted,

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(3)

No. 03-1716

In the Supreme Court of the United States

THE LURIE COMPANY (221 N. LASALLE, CHICAGO, ILLINOIS),

Petitioner,

v.

COOK COUNTY BOARD OF REVIEW,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Illinois

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

The Board[1] does not challenge the merits of Lurie's due process claim. Instead, the Board argues that this Court lacks jurisdiction under 28 U.S.C.A. §1257(a), for two reasons. First, according to the Board, Lurie waived its due process claim by not presenting it appropriately below. Second, the Board asserts that this case does not present a federal question. Both of the Board's arguments are without merit.

I. Lurie Did Not Waive Its Federal Due Process Claim.

The Board of Review's primary argument is that Lurie waived its federal due process claim by not raising it in the state courts. (Opp. at 6.) The plain facts defeat this assertion:

- On July 13, 1998 and July 12, 1999, the Board of Review, following hearings that generated no reviewable record, issued one-sentence rulings denying Lurie's request for real property valuation reductions for the years 1997 and 1998. (App. at 1-6.)

- On appeal from the Board's rulings, the Illinois PTAB, on August 2, 2001, unanimously held that the evidence presented to the PTAB warranted a valuation reduction (App. at 7, 32, 49-50), and, further, that the proper level of assessment was not 38% of market value, but rather 25%, pursuant to article IX, section 4 of the Illinois Constitu-

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[1] The same shorthand references used in Lurie's Petition are used herein. The Board's Brief in Opposition to Petition for Writ of *Certiorari* is hereinafter referred to as "Opp.".

tion, which requires that the level of assessment for the highest class of property be no greater than two and one half times the level of the lowest class ("Constitutional Ratio"). (App. at 7, 39, 43, 49-50.)

- On December 16, 2003, the Appellate Court held[2] that Lurie had waived the state constitutional issue by failing to present it to the Board back in 1998 and 1999, thus retroactively changing existing law and depriving Lurie of its opportunity to present its state constitutional claim. (App. at 51-61.) It is this decision that first gave rise to the federal due process claim raised by Lurie in its Petition to this Court.

- Finally, on March 26, 2004, the Illinois Supreme Court issued an Order denying the PTAB's and Lurie's respective Petitions for Leave to Appeal ("PLA") from the Appellate Court's decision. Lurie's PLA to the Illinois Supreme Court raised the federal due process issue Lurie presents herein.

This procedural history shows that immediately following the Appellate Court's decision, which is the basis for Lurie's federal due process claim, Lurie raised the due process issue in its PLA filed with the Illinois Supreme Court. (Petition, at 6) (citing App. at 165, 168, 170, 185.) Lurie had no reason or right to raise the federal due process question prior to its PLA because the violation of its due process rights was occasioned by the Appellate Court's decision.

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[2] *Cook County Bd. of Review v. Property Tax Appeals Bd.*, 803 N.E.2d 55 (Ill. App. Ct. 2003).

Lurie's predicament is directly analogous to that which faced the taxpayers in the two decisions by this Court on which Lurie's Petition primarily relies, *Brinkerhoff-Farris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930) and *Richards v. Jefferson County, Alabama*, 517 U.S. 793 (1996) (Petition at 12, 16-18). In both of those cases, this Court found that a taxpayer's federal due process rights were violated when a state court changed the law without notice, and then retroactively applied it to a taxpayer who had followed previously existing law. *See Brinkerhoff*, 281 U.S. at 677-78; *Jefferson County*, 517 U.S. at 797. That is exactly what happened to Lurie here.[3]

In a strained attempt to distinguish *Jefferson County* and *Brinkerhoff*, the Board assigns undue significance to the fact that Lurie did not file a petition for rehearing either before the Appellate Court or the Illinois Supreme Court. (Opp. at 10.) However, Lurie had no obligation to do so. After the Appellate Court issued its opinion, Lurie had the option of either filing a PLA with the Illinois Supreme Court or filing a petition for rehearing with the Appellate Court. *See* ILL. SUP. CT. R. 315(b). Lurie chose the former, and, as stated above, raised the federal due process question in its PLA. (Petition, at 6) (citing App. at 165, 168, 170, 185.) After the Illinois Supreme Court denied its PLA, Lurie acted correctly again by raising the due process issue in its Petition to this Court. Thus, contrary to the Board's argument, Lurie followed the Illinois Supreme Court Rules and properly preserved the issue for review by this Court. *Jefferson County* and *Brinkerhoff* squarely apply here.

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[3] The Illinois General Assembly recently passed legislation that made clear that the Appellate Court's decision misapplied existing law. *See* discussion pp. 7-8 *infra*.

The Board also argues that Lurie should not have been "surprised" by the Appellate Court's waiver ruling below because, after Lurie's appeal was fully briefed, the Appellate Court issued a decision in a different case, *Cook County Bd. of Review v. Property Tax Appeal Bd.*, 791 N.E.2d 8 (Ill. App. Ct. 2002) (sometimes referred to as "*Bosch*"). (Opp. at 11.) This argument misses the point. As the procedural history outlined above shows, the critical Board of Review hearings, where the waiver was held to have occurred, transpired in 1998 and 1999—four and three years before *Bosch*. *See* discussion pp. 1-2 *supra*. The fact that Lurie knew about *Bosch* before the Appellate Court's ruling in Lurie's case is irrelevant because that knowledge still came years after Lurie had any opportunity to comply with the new rule.

The Board also argues that Lurie waived its due process claim by "vaguely invok[ing]" the issue in its PLA to the Illinois Supreme Court. (Opp. at 7-9.) Again, the Board is incorrect. Precedents of this Court make clear that, in framing the federal question for presentation to the state court, a litigant must simply bring the federal claim and the grounds therefor to the state court's attention. For example, in *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928), this Court stated that, "[I]f the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented." Similarly, in *Eddings v. Oklahoma*, 455 U.S. 104, 113-14 n. 9 (1982), this Court, citing *Zimmerman*, held that a specific question regarding the Eighth Amendment to the United States Constitution was properly before it even though the question had been presented to the state court in general rather than precise terms. In so holding, this Court remarked, "our jurisdiction does not depend on citations to book and verse." So too, in *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 159

n. 5 (1980), this Court held that a generalized "due process" argument addressed to the "Florida Constitution and its Federal counterpart" was "a sufficient base for this Court's consideration of the federal issue." *See also Braniff Airways v. Nebraska State Bd. of Equalization and Assessment*, 347 U.S. 590, 598-99 (1954).[4]

Here, Lurie specifically identified a federal due process issue in its PLA to the Illinois Supreme Court. (Petition, at 6) (citing App. at 165, 168, 170, 185.) Lurie also argued, at length, the fundamental unfairness of the Appellate Court's decision that gave rise to the federal due process issue. (*Id.*) Under the precedents of this Court cited immediately above, that was sufficient to provide this Court with jurisdiction to consider Lurie's claim.

For all of these reasons, this Court should reject the Board's argument that Lurie waived its federal due process claim.[5]

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[4] The main authority on which the Board relies in support of its argument that Lurie failed to raise the federal due process issue with sufficient specificity is *Adams v. Robertson*, 520 U.S. 83 (1987). (Opp. at 7-9.) *Adams* is readily distinguishable, for two reasons. First, the petitioner in *Adams* failed to cite to the United States Constitution in the record below. *See Adams*, 520 U.S. at 89 n. 3. Second, the petitioner in *Adams* filed a petition that contained no citations to the record below, and instead merely directed this Court's attention generally to eighty pages of trial court papers contained in the joint appendix. *See id.* The matter *sub judice* does not suffer from either of those defects. (App. at 165, 168, 170, 185.)

[5] In its Statement of the Case, the Board also asks this Court to ignore pages 109-150 in Lurie's Appendix. Pages 109-118 of the Appendix consist of Lurie's original 1997 and 1998 Complaints before the Board from which this Petition stems and, therefore, are necessarily a part of the record below and were

(continued...)

II. This Case Presents A Federal Question.

The Board of Review also argues that the Appellate Court's decision involves only questions of Illinois law which the Appellate Court correctly applied, and that no federal due process issue exists. In the alternative, the Board asserts that the Appellate Court's decision could be upheld on independent state law grounds. The Court should reject these arguments for several reasons.

As a threshold matter, it is well-established that the Fourteenth Amendment to the United States Constitution prevents states from denying potential litigants the use of established adjudicatory procedures when such an action would be the equivalent of denying them an opportunity to be heard upon their claimed rights. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-30 (1982). That is precisely what happened here. The new rule that litigants were required to raise state constitutional arguments before the Board of Review was not announced until 2002, in *Bosch*. The rule was then applied *ex post facto* to hold that Lurie waived its state constitutional claims by not raising them in hearings before the Board of Review in 1998 and 1999. As a result, neither the Appellate Court nor the Illinois Supreme Court has ever granted Lurie a hearing on the issue of

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(...continued)
included in the appeal to the PTAB. Pages 119-150 of the Appendix consist of an annual published review of the Board. This annual review is an updated highlight of the statistics which are already incorporated into the Illinois Supreme Court decision in *People ex rel. Devine v. Murphy*, 693 N.E.2d 349, 356 (Ill. 1998), cited on page 14 of Lurie's Petition and, thus, is incorporated by reference. The annual review was included in the Appendix for the convenience of this Court and is not necessary to support Lurie's argument.

whether, as the PTAB held, Lurie's rights under the Constitutional Ratio provision were violated. Under *Logan*, this constitutes a federal due process violation.

Furthermore, there can be no doubt that the Appellate Court's application of Illinois law was incorrect. The Illinois General Assembly recently amended the Illinois Property Tax Code to clarify what Lurie and every other practitioner before the PTAB understood to be the law all along:

> ***[A]ll appeals shall be considered de novo*** and the Property Tax Appeal Board ***shall not be limited to the evidence presented to the board of review of the county***. A party participating in the hearing before the Property Tax Appeal Board is entitled to introduce evidence that is otherwise proper and admissible ***without regard to whether that evidence has previously been introduced at a hearing before the board of review of the county***.

35 ILL. COMP. STAT. ANN. 200/16-180, *as amended by* P.A. 93-0248 (West Supp. 2004) (emphasis added) ("Section 180").[6] The amendment further provides that "the provisions added to this Section by this amendatory Act of the 93rd General Assembly ***shall be construed as declaratory of existing law*** and ***not as a new enactment***." *Id.* (emphasis added).

This statute conclusively proves that the Appellate Court's decision was not a correct application of Illinois

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[6] As this amendment was proposed legislation, and not law, at the time Lurie filed its Petition before this Court, Lurie did not address it. The amendment became law on July 16, 2004. The amendment does not rectify or render moot the due process violations raised here by Lurie.

law, and that the Illinois Supreme Court erred by refusing to review it. Accordingly, it supports Lurie's contention that the Appellate Court's decision conflicted with existing Illinois case law, the statute creating the PTAB, the Rules of the Cook County Board, and long established practice before both bodies. Therefore, much like the parties in *Brinkerhoff, Jefferson County,* and *Logan* (*See* discussion pp. 3-4, 6 *supra*), Lurie had no prior notice that by failing to raise its state constitutional claim before the Board of Review, it waived it. Moreover, after the erroneous Appellate Court's decision, Lurie had no opportunity to comply with the newly adjudicated law. This constituted a deprivation of Lurie's property right without a proper and meaningful opportunity to be heard, or proper notice of the procedures pursuant to which it would be given the opportunity to be heard.[7]

Finally, the Board argues that no federal question exists because the Appellate Court had an independent state law ground for refusing to consider the Constitutional Ratio issue, namely that Lurie raised the issue in rebuttal, rather than in its original Petition to the PTAB. (Opp. at 17-19.) The Board ignores, however, that the PTAB's Rules expressly allow rebuttal evidence "to explain, repel, counteract or disprove facts given in evidence by an adverse party" pursuant to title 86, section 1910.66(b) of the Illinois Administrative Code ("Section 1910.66(b)") (Conway Greene CD-Rom 2002). (App. at 88.) Here, the Board placed the issue of assessment levels

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[7] While the Board of Review properly acknowledges the July 16, 2004 amendment of Section 180, it mischaracterizes the changes made to the statute and their effect. (Opp. at 5.) The Board also fails to quote the relevant portions of the amendment stated above, which are in direct contradiction to the Appellate Court's decision and the Board of Review's position. (*Id.*)

at issue in its response to Lurie's Petition to the PTAB. (App. at 22-24.) Lurie was then entitled under Section 1910.66(b) to present rebuttal evidence to "explain, repel, counteract [and] disprove" the issues the Board raised. The PTAB properly considered Lurie's rebuttal evidence in exercising its power to hear both legal and factual issues (App. at 162) and its statutory mandate to render decisions "based upon equity and the weight of the evidence." 35 ILL. COMP. STAT. ANN. 200/16-185 (West 2002).

In sum, the Appellate Court's decision did not rest on properly applied state law, and the Illinois Supreme Court erred by refusing to review it. The Illinois courts' decisions retroactively denied Lurie the opportunity to be heard on a valid and meritorious state constitutional claim. This denial of Lurie's right to be heard directly violated Lurie's rights under the Fifth and Fourteenth Amendments to the United States Constitution.

CONCLUSION

For the foregoing reasons, and the reasons stated in its Petition, The Lurie Company requests that this Court grant its Petition for Writ of *Certiorari*.

Respectfully submitted,

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